(2) RULES UNDER THE HEREDITARY OFFICES ACT, 1874.

Rules under Part I. of the Act.

Section 1.—The meaning of the term "Regulation Districts" is defined in the Bombay General Clauses Bo. Act X of 1866.*

Section 4.—The wide extent of the words "watan property" as here defined requires particular notice. The profits of watan property are frequently specially mentioned in particular sections. A right to profits is of course an interest in the watan. The definition of the watan, which includes the hereditary office with its rights and privileges, and the property, if any, attached thereto, is believed to be in accord with the notion conveyed in the popular use of the word. The fact that it is often found that the share in a watan bears no proportion to the share in the land or other watan property, shows the distinction between the two things, *e.g.*, a watandár universally recognized as an eight-anna sharer sometimes has no share whatever in the property. This indicates the abstract meaning of the term watan in ordinary parlance, and this meaning is intended in the definition. (G. R. No. 5115 of 8th September 1875.)

The language used in defining "watandár" includes under that term acquirers under the native governments, and those claiming now under such acquirers. It would be inexpedient to re-investigate the title to such acquisitions. As to subsequent acquisitions, the definition only includes those who have acquired them in a *legal* manner; and in determining on this point, it will be necessary to refer to the provisions of Regulation XVI. of 1827 and Act XI of 1843 and to the Settlement Acts. Fraudulent transfers made contrary to the express provisions of the law cannot be considered legal.

Rules under Part II. of the Act.†

Section 5.—Cancelled. (G. R. 2793 of 3rd May 1888, R. D).

Section 7.—Without the previous sanction of Government the part of the watan property assigned for the officiator cannot be alienated in any way to any person whatever.

Section 8.—Section 8 provides a means by which the Collector can enforce contribution for the remuneration of the officiator in the following circumstances:—

(*a*) Where any part of a watan *whatever* or profits have passed by a British decree before the

* Repealed by Bo. Act III of 1886, section 2 and Schedule A.

† For the purposes of Part II. of the Watan Act each taksim should be treated as a separate watan. The land of each taksim will be watan, but a member of the one taksim will have no hereditary interest in the watan land of the other taksim. He therefore as regards that land is not a watandár, and the lands in which he has an hereditary interest must be held to constitute a watan separate from that enjoyed by the other taksim in which he has no such interest. (G. R. No. 6026, dated 25th July 1875, R. D.).

passing of this Act into the enjoyment of any person except the officiator for the time being.

(*b*) Where, before the passing of the Act, any part *whatever* of the watan or profits has *without* a British decree passed into the enjoyment of a watandár not being the officiator.

(*c*) Where *after* the passing of the Act, by means of a British decree, any part except that assigned for the officiator has passed into the enjoyment of any other watandár.

The above three cases may be regarded as exceptions to the procedure provided in section 9, by which a resumption of the property or profits of any part of the watan whatever may be made. Section 9* governs cases fulfilling *all* the following conditions:—

(1) Alienation before the passing of the Act.
(2) Without both a British decree and a proper consent by the Revenue authorities.
(3) To an outsider.

In case (*a*) the reason of the exception is that although the property may have been illegally alienated, it was by decree of a British Court.

In case (*b*) the reason is that the transfer, though invalid and without a decree, was made from one member of the watan to another.

In case (*c*) the reason is that the transfer will be from one member to another, and by a decree, of the part not assigned to the officiator. The case is the common one of a partition or succession at Hindu law, where the civil courts define each person's rights.

Section 12.— It will be perceived from the above, that by section 8 an alienee who has come into possession of profits of watan property under certain circumstances, cannot be dispossessed by the Collector. Hence, under the definition of watandár the alienee has an interest in the watan and is a watandár, but cannot be entered in the register as a representative watandár unless he has established a customary right to serve. On the other hand, if these circumstances do not exist, the Collector *may*, under section 9† dispossess the alienee of the profits. But this section is not, like sections 10 and 11, which refer to alienations made after the passing of the Act,

* Section 9 is inapplicable to alienations made before the Act came into force and which took place either by virtue of or in execution of a decree or order of a British Court, or with the consent of the Collector and a mutation of names in the revenue records. (G. R. No. 2253, dated 19th March 1883, R. D.)

† The statement that section 9 is permissive only and not imperative, applies only to section 9, clause 1, the provisions of which confer a power and do not impose a duty to be in certain circumstances performed.

Section 9, clause 2, on the other hand, as pointed out in Government Resolution No. 9506 of 26th December 1883, is imperative, for it imposes a *duty* to be performed when the occasion arises, and does not merely confer a power to be exercised at discretion. (Memo. by Acting L. R., G. R. No. 947, dated 4th February 1890, R. D.)

Julius vs. Bishop of Oxford—L. R. 5, App., Ca. 214.
I. L. R. 4. B. 489.
Maxwell on Interpretation of Statutes, 218.

imperative but permissive only, and it is desirable to lay down some rule for the guidance of the Collector in exercising the power conferred on him by section 9.

The general rule is that alienations effected before the passing of Act XI of 1843, and in lately acquired territory before the introduction of British rule, shall not be interfered with. The profits thus alienated will, of course, be liable to contribution to the emoluments of the officiator under section 23, and the alienee cannot be registered as a representative watandár unless he has established a customary right to serve under section 26.

Alienations effected since 1843 should not be interfered with when fraud is not apparent, when reasonable consideration was passed, and when the profits have actually been in the enjoyment of the alienee. In other cases the Collector should, according to his discretion, have recourse to one or the other of the two courses laid down in section 12, which section is more fully explanatory of section 9.

*Sections 10 and 11.**—Sections 10 and 11 provide amply against future alienations of an illegal kind. Section 10 applies where the watan is attached or sold by a court. The Collector's certificate leads to the removal of any process attaching the officiator's share, at the instance of any person whatever, and will have the like effect as to the rest of the watan when an illegal transfer has been made to any outsider. The certificate does not apply to property (except that assigned to the officiator) disposed of among the watandárs themselves by a suit *inter se*. (G. R. No. 2793, dated 3rd May 1888, R. D.)

Section 11 provides for summary proceedings by the Collector himself in all future cases not supported by a court's order of (1) alienation of the officiator's share, (2) alienation of any part to an outsider.

The procedure by certificate or resumption under sections 10 and 11 can take effect only where the property affected has been recorded or registered. Hence it will be the duty of Collectors to pay particular attention to those functions.

Section 13.—Watan assigned as the remuneration of the officiator and its profits cannot be attached by civil courts. Where this is done by inadvertence, the Collector can cause the removal of the process.

The Collectors should inform all patels and kulkarnis and all the members of watandár families, that it is their duty to bring to notice all illegal alienations of watan or profits, and all invalid attachments or process placed upon them in future.

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* Sections 10 and 11 of the Act, so far as they affect alienations of life interests in "unassigned" watans, were repealed by implication under Bombay Act V of 1886.

For "if the co-existence of two sets of provisions would be destructive of the objects for which they were passed, the earlier would be repealed by the latter." (Memo. by Acting L. R., G. R. No. 8513, 20th December 1888, R. D). Maxwell on Interpretation of Statutes, page 145.

Section 14.—It is not thought desirable that two or more hereditary offices should be combined except for very substantial reasons.

Rules under Part III. of the Act.

(G. R. No. 4235, dated 27th May 1885.)

Section 15.—This section is intended in the conservative spirit which pervades the Act to give the completest confirmation to settlements in commutation of service already agreed upon by Government and the watandárs.

Section 16.—With the same desire to avoid interference with ancient rights and customs, the Legislature has let alone whatever rights and duties may exist between watandárs and villagers.

Section 17.*—It is inexpedient that the present rates and mode of payment in alienated villages should be altered except when serious disputes arise, or the parties agree on a new scale.

Section 18.—This section was introduced in order to provide for the legal definition of the rights and duties of the village Mhárs and watchmen, and to lead to a peaceful settlement of the quarrels which at present tend to the damage of the Mhárs, who revenge themselves by poisoning the cattle of the ryots. The section can only be used when application is made by a person interested. By employing a village panchâyat to deal with these minute and intricate matters, the Collectors are enabled to avoid an annoying responsibility. Government desire to impress on all the Government service the necessity of showing very great patience in using the panchâyat. Experience has shown that many delays and more informalities are tolerated by such a tribunal, and that, without some aid and even judicious supervision, the institution may become too tardy for action. The Government hope, however, that their officers

* "The haks which a kulkarni is entitled to recover from the cultivators of an inám village are not 'charges on the revenue or rent of villages, or other defined portions of territory.' They are payments for which the cultivators are liable to the kulkarni in addition to the rent, if any, which they pay to the inámdár and are not recoverable from that rent. Moreover it cannot reasonably be contended that the words 'villages or other defined portions of territory' include cultivator's holdings. Such haks as those in question are not covered by the definition of the word 'land' in section 3 (4) of the Land Revenue Code, and the kulkarni, who is entitled to receive such haks, is not in respect thereof a superior holder.

"2. According to the view approved by Government in Government Resolution No. 7884 of 26th December 1881, section 17, Bombay Act III of 1874, is the law which applies to haks such as those in question. This seems to be admitted by the Collector, but he is encountered by the difficulty that in unsurveyed inám villages he cannot tell whether the aggregate of the haks would or would not be more than 'equivalent to the amount that would be payable under the scale in force for the time being in the case of Government villages,' and therefore cannot tell whether in determining under that section the amount of payments recoverable by a kulkarni, he transgresses the proviso to the section. An approximate estimate of the amount that would be payable if the village were a Government village will sufficiently satisfy the proviso, and such estimate may be based upon general considerations without requiring the detailed particulars obtainable in a surveyed village." (G. R. No. 3786, dated 26th May 1886, R. D.)

will apply themselves to gaining the great advantage of decisions of panchâyats by exercise of caution and patience, and that the influence of the mámlatdárs and patels will prevent extravagant delays.

The Government are convinced of the necessity of dealing with the village Mhárs and watchmen with the utmost care and caution; it is not at all desirable that the authority conferred by section 18 should be generally used: it will be sufficient to apply it when the disputes grow so high as to lead to fighting, arson, or poisoning of cattle. In fact, it should only be used in the last resort. Generally the ryots and the Mhárs are a fair match for each other: each class is sure to try to interest inexperienced officers in hopes of gaining some petty advantage. A very slight gain in one village will incite the same class in neighbouring villages to petition for settlement—a consequence it is in every way desirable to avoid. Hence the anxiety of Government that section 18 should not be used except under pressing circumstances, and that the decisions when it is used should invariably be those of panchâyats.

Rule under Part IV. of the Act.

Section 22.—The creation of new watans and the assignment of lapsed watans are matters belonging to the Government, and require no directions here.

Rules under Part V. of the Act.

* *Section* 23.—No new line of action in fixing the emoluments of officiators is indicated, or at present desired.

Rules under Part VI. of the Act.

Section 24.—In Part VI. an endeavour has been made to supplement the provisions of the law existing before the passing of the Act, and to give greater form and accuracy, and consequently more binding effect to the registers already instituted by law or departmental orders, or both combined.

The representative watandár is by definition a watandár registered by the Collector as having a right to perform the duties.

The ample inquiry which took place before the passing of the Bill showed the extreme difficulty of legislating for the great number of ancient customs and recent practices, which vary much in each province and even district. In some districts Act XI of 1843 has very recently been applied in such a way as to increase the number of recognized sharers until the watan has become almost unmanageable. In others very careful inquiries have been made and the results registered, and the shares thus settled have become generally known. It is obviously expedient

*It appears that the watan land on which Scale Judi has been imposed according to rules for the payment of remuneration to Patels and Kulkarnis is watan lands the profits of which have been assigned (in part at least) towards the emoluments of officiators, and as such it should be treated as land assigned for the remuneration of an officiator under section 23 of the Bombay Act III of 1874. (G. R. No. 5986 of 24th July 1885, R. D.

to deal in different ways with these two classes. While, therefore, section 26 provides that the Collector shall *not be bound* to recognize appointments and sub-divisions made subsequently to the introduction of Act XI of 1843, which he considers mere practices contrary to the *custom* of the watan, section 73, clause 2, on the other hand, indicates plainly that practices established after the careful inquiries instituted from about the year 1866, A.D., and acquiesced in since, are not to be disturbed; and Government will not be disposed to deviate from the existing registers in such instances without very weighty reasons being adduced.

Government would also draw prominent attention to the different manner in which the words "custom" and "practice" are used in the Act. The practice is by section 26 to be looked at, but so also the records; both are species of evidence of custom. This should be borne in mind where they do not coincide; in many cases it will be found that the practice since British rule began has been to appoint from one or more families, while other families have acquiesced on the understanding that their rights subsisted unaffected. This understanding is often proved by official entries; it often subsists in well-known and undisputed tradition. The Collectors will, of course, subject to the rule contained in section 73, clause 2, bring as much research and experience as possible to their judgment on the evidence, taking care that mere accident shall not prejudice just rights, and at the same time that mere recent practices of sub-divisions shall not be allowed to weaken the village system contrary to the proviso of section 26.

It is necessary that particular attention should be paid, under Part VI of the Act, to decisions of the civil courts in suits instituted before the Act came into operation. Such decisions, Government are advised, should be accepted as evidence within the meaning of section 26 of the Act, and as conclusive evidence so far as they are consistent with the provisions of the Act.

The following rules are therefore to be observed on this point:—

(I.)—Decisions passed by the Collector since 1866 shall not be accepted under clause 2 of section 73 of the Act when they have been set aside or modified by the civil courts, but in such cases the courts' decrees shall be acted upon, so far as they may be consistent with the provisions of the Act.

(II.)—When litigation is still pending concerning any such decision it should not be accepted, nor should any final order be passed under section 73 of the Act until the final decree of the civil courts is obtained, when it should be acted upon as in the case of already existing decrees.

(III.)—Government reserve the right of directing that previous decisions other than the above shall not be accepted in particular cases.

**Rules under Part VII. of the Act.*

Section 40.—Where the Collector has defined the order of service to be that of successive periods, the representative watandárs are entitled to elect an officiator. This procedure meets the views of many of the Revenue officers, who hoped that the best and most influential men would be elected by the good sense of the wátandárs. It is most desirable that this safeguard should be preserved and the popular custom maintained; the Government believe that the influence of the Collector and his Assistants, otherwise secured by the power of veto, will be sufficient to prevent grossly improper election, without interfering with its many advantages.

Rules under Part VIII of the Act.

The sections in Part VIII. go much into detail as to appointments and removals of watandárs and deputies, and require no particular discussion.

Section 42.—With reference to section 42 it should be remembered that it is the wish of Government that representative watandárs should serve in person and that, as a rule, the appointment of deputies should only be permitted in cases in which watans are owned by sardárs of so high a rank that they could not be reasonably expected to serve in person.

†*Section 43.*—The determination of the number of officiators required should be made by the Collector under section 43, with much regard to the condition of family as well as to the needs of the village. Neither in this nor in any other matter is general or rapid change desirable. With a view to preserve the family and to secure the most respectable servants, it is provided that deputies must be watandárs except in particular contingencies. The broad appli-

* The portion of the Rules relating to Matádárs is omitted in this edition, the law now applicable being the Matádárs Act, Bo. VI of 1887. Elections under section 17 of that Act are regulated by the Rules made under section 18 thereof—*Vide* Notification No. 1339, *B. G. G.*, 1888, Pt. I., p. 198, *et infra*.

† In registering a watan it is not necessary to say anything about the performance of the police pátil's duty in the way of assigning the right to it to any person.

Under section 43 the Collector determines the number of officiators required for the duties, *i.e.*, he says one officiator can do all the duties, both revenue and police, or the village being large, *two* officiators are required contemporaneously. But he does *not* say, of these A is to do the revenue and B the police duties. When the Magistrate appoints a police pátil under Bombay Act VIII of 1867, section 5, he respects the settlement of officiators as far as he can. Thus Government decided in Resolution No. 7127, dated December 20th, 1875, that when there are two officiators, the Magistrate gives the sanad of police pátil to whichever of the two he pleases. (G. R. No. 4157 of 10th June 1886, R. D.)

In practice there are two classes of cases :—

1st.—When the office of police pátil has been customarily given to the revenue pátil. In such cases the representative watandár, if fit for revenue office, will presumably be also fit for police duty and no question of nomination of a deputy will arise. If the representative watandár is not qualified for the revenue duty and is allowed to appoint a deputy, the Magistrate can either select a police pátil from the other representative watándars, if any, or if there are none, or none fit, can invest the deputy with the office of police pátil.

cation of the term watandár to collaterals should not be lost sight of.

**Section 54.*—When the Collector appoints a deputy the term should be five years.

Rule under Part IX of the Act.

The provisions as to penalties require no remarks.

Rules under Part XII of the Act.

Section 69.—Section 69 imposes on the hereditary officers the duty of rendering both customary services and those specifically required by law. Where doubts exist, Government will determine under section 83.

Section 71.—The privilege of signing village papers, where it has been customary, is preserved to heads of families whether representative watandárs or not. This concession to the feelings of an influential

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2*nd.*—When the office of police pátil is held as a separate watan from that of revenue pátil. In this case if there be only one representative registered by the Collector and he is unfit to serve, but not unfit to nominate a deputy, the Magistrate should call upon him to nominate under Chapter VIII of the Watan Act. If there be more than one respresentative registered by the Collector, and the watandár whose turn it is to serve is not fit, the Magistrate may appoint any other registered representative, and if none are fit, may call upon the watandár whose turn it is to serve to nominate a deputy under Chapter VIII of the Watan Act. (G. R. No. 3057 of 25th April 1889, R. D.).

Section 5 of Bo. Act VIII of 1867 binds the Magistrate to appoint as police pátil the person having sole hereditary right to that office if there is one, but in case there is no such person and there are two or three claimants having an hereditary interest in the office, the Magistrate is not bound to follow particular order of rotation but can select from among them. He would not be justified, however, in selecting from a branch which in consequence of some ancient alienation or family custom had long lost its right to perform police duties.

The question appears to be entirely one of custom, and that can be decided by the Collector when preparing the watan register. Section 25 imposes on him the duty of determining the custom of the watan as to service, and in the register he can note down any rules or limitations which are authorized by custom.

In cases in which there are distinct takshims belonging to radically different families and attached to distinct offices, there is no objection to treating the several takshims with their respective offices as district watans. But where the different branches of the family spring from one original watandár, it does not appear necessary to do so. The heads of the families can be registered as representative watandárs of one watan. If the Collector thinks that one branch has by custom acquired the sole right to serve as police pátil, he can register such right, and the Magistrate who makes the appointment of police pátil will be bound to recognize it under the first sentence of the clause from the Police Act above quoted.

It will be observed that the mere fact of registration as a representative watandár does not necessarily include the right to discharge at some time or other every function of pátil, for in each case it is the duty of the Collector to determine the custom of the watan after consideration of the practice heretofore observed from the earliest period for which there are records or other evidence available. (G. R. No. 5902 of 2nd September 1887, R. D.)

*The provisions of section 54 of the Act do not appear to be opposed to permitting a watandár who has resigned office owing to inability to serve, to nominate a deputy for the remainder of his term of office which is less than five years; but when the officiating watandár resigned the Kulkarniship for the purpose of taking office in another village he should be deemed to have vacated. (G. R. No. 451 of 20th January 1886, R. D.)

class of men should be worked in the spirit in which it was enacted.

*Rules under Part XIII of the Act.**

It is hoped that the defined procedure set forth will simplify investigations. The Collector's proceedings are, by section 74, under the control of the Revenue Commissioner, and for this reason, and in order to secure discussion, some uniformity and reference to general as well as local reasons, Government direct that all references, reports and returns relating to watans on which Government have to pass order should be forwarded through the Revenue Commissioner, and submitted with his remarks or opinion.

†*Sections 76 to 78.*—The rules as to appeals place decisions of the Revenue officers on much the same footing as those of Magistrates of the first class; there is more safeguard of written proceedings than under the former law, and thus more finality is secured.

Appointment of a Deputy to the office of the Police Pátil.

Section 79.—But, as already noticed, some uniformity is desirable, and section 79 gives Government a general power of revision, which will be exercised where decisions are passed contrary to the provisions of the Act. The Revenue Commissioner should report such cases. This section, it is to be observed, gives Government alone the power of calling for cases; and on the principle of *expressio unius est exclusio alterius* neither the Collectors nor the Revenue Commissioners have the power to call for cases which are not brought before them by regular appeal, since the decision of an Assistant or Deputy Collector under the power vested in him (which must be delegated to him under section 10, Bombay Act V of 1879) is as good and as conclusive as that of the Collector himself, and is not therefore liable to be reviewed by the latter. Government consider it, however, desirable that the Revenue Commissioners and Collectors should be empowered to call for cases disposed of under the Act by officers subordinate to them, even if no appeal be presented, and under section 82 of the Act this power is hereby conferred on the officers named. Should it be put in force it will not be in the Col-

* Section 73 is not exhaustive in its enumeration of investigations requiring record in writing; and though it does not require an order refusing the service of a representative watandár to be so recorded, section 45 (*e*) as amended by section 9 of Bombay Act V of 1886 does.

Section 45 only contemplates such a refusal in the case of a representative watandár who is *personally* of bad character, and such refusal must be preceded by a summary enquiry regulated by section 195, Bombay Land Revenue Code, in which a minute of the proceedings must be recorded in the Collector's own hand and must embrace the material averments of the parties. (Memo. of Acting L. R., G. R. No. 5365 of 27th July 1889, R. D.)

†Not only an appeal but a second appeal will lie from a decision or order passed without recorded investigation. (Memo. by Acting L. R., G. R. No. 8506 of 8th November 1889, R. D.)

lector's or Revenue Commissioner's power to review or alter the decision, but only to report upon it to Government under section 79 of the Act.

Section 81.—When it is necessary to take steps under section 81 for the recovery of any payment in kind, the Collector may direct that if the person liable for the payment does not, upon demand, pay what is due by him in kind, steps shall be taken for enforcing payment of the money value thereof at the market rates of the day. (G. R. No. 831 of 2nd February 1886, R. D.)

Section 82.—Government desire that the Collectors should, in suggesting general rules, adhere, as far as the Act permits, to existing arrangements, except where serious reason exists for alteration, or where trifling changes lead to more general uniformity.

When it has been the custom for a member of each of two or more takshims to serve contemporaneously, and in one or more of such takshims a member of each of several families has performed the duties in successive periods, the custom as to contemporaneous service shall, subject to the provisions of section 43, be recognized, and the rights of the representative watandár, or of the representative watandárs of each takshim as to service, shall be determined under the provisions of the Act as if each such takshim constituted a distinct watan.

(Notn. No. 6337, *B. G. G.* for 1887, Pt. I., p. 807.)

When on enquiry it appears to the Collector that there are strong reasons for doubting the fact or legality of an adoption reported to him under section 34 of the said Act, he may make an order suspending registration of the name of the alleged adoptive heir until such time as the adoption is declared valid by a competent Court: Provided that in any such case he shall fully record the grounds of making such order and shall communicate them to any party concerned, and provided that he may at any time for sufficient reason set aside such order and direct registration of the name or further enquiry as he may think suitable.

Costs of copies of original papers recorded in watan proceedings.

When any party in a watan case who has filed any document in evidence applies to have such document returned to him, the document may be returned. But in every such case a copy of such document properly certified and made at the expense of the applicant shall be substituted for such document in the record of the case. (G. R. No. 148 of 11th January 1886, R. D.)

ELECTION RULES UNDER THE MATA'DA'RS ACT, B. VI OF 1887.

27th February 1888.

In exercise of the power conferred by Section 18 of the Matádárs Act, No. VI of 1887, published at pages 1—11 of the *Bombay Government Gazette* of the 30th January 1888, Part IV, His Excellency the Governor in Council is pleased to make the following rules :—

1. On, or in anticipation of, the occurrence of a vacancy in the office of Patel in any village to which section 15 of the above Act applies, the Collector, or with his sanction, an Assistant or Deputy Collector, shall issue a notice in the form hereto appended to all the Matádárs of the village, fixing a date and place for the election of a Patel. (Notn. No. 1339, *B. G. G.*, p. 198.)

2. The date fixed for the election shall not be less than 14 days from the date of notice.

3. The notice shall be endorsed by all the Matádárs of the village, or by as many of them as can be found, and a copy shall be posted up at the Chowra or at some other conspicuous place in the village. The original notice endorsed by the Matádárs shall be returned to the officer issuing it before the date fixed for the election.

4 Only females shall be allowed to vote by proxy, such proxy being on paper bearing one rupee stamp and duly attested.

5. Each voter shall, in the presence of the presiding officer, write or cause to be written the name of his or her nominee on a piece of paper which shall be signed by the voter.

6. No elector shall vote for more than one person, provided that an elector who is the guardian of a minor Matádár of the village, shall have two votes on each question.

7. An election fails,—

(1) if a majority of the Matádárs do not attend in person (or in case of females, by proxy) ;

(2) if no person eligible under the Act obtains the votes of more than half the total number of Matádárs of the village ;

(3) if the person elected is unfit or disqualified, or within 14 days declines, or fails to accept, the appointment.

8. If a majority of the total number of Matádárs then and there agree upon the term, exceeding five years, during which their nominee is to serve, he shall be appointed for such term. Failing such agreement the term shall be five years (Section 23).

9. When an election fails, the presiding officer shall call on the representative Matádár of the family, whose turn it is to officiate, to serve in person or by deputy.

Form of Notice referred to in Rule 1.

Whereas a { Revenue and Police } Patel has to be appointed for the village of in the Táluka of the District, from the day of 189 , notice is hereby given to the undermentioned Matádárs of the said village to appear at on the day of 189 , at o'clock in the office of the Collector of , there to elect a member of the family of Matádár, to serve in the abovementioned office for such term, not less than five years, as the Matádárs may, on the date above mentioned, agree to fix :—

Matádárs.

1
2.
3.
4.

2. The abovementioned Matádárs are also hereby informed that unless at least of them agree before me, on the date above specified, in nominating a qualified member of the family abovementioned, the representative Matádár whose turn has arrived will be appointed.

Date of issue.

Collector.

ADDITIONAL ORDERS AND RULINGS.

Forfeiture and disposal of Watan Land for Arrears.

Watan land is "alienated land" within the meaning of clause 19, section 3 of the Revenue Code, and when an arrear of land revenue is due in respect of any such alienated holding, the Collector may, under section 153, declare the holding to be forfeited to Government. When the holding has been thus forfeited, the Collector, may, under section 57, take immediate possession, and it then can either be sold or be disposed of under rules or orders made in this behalf by Government under sections 56 and 214 (*e*).

If the holding is simply sold by the Collector as an alienated holding, the purchaser would become entitled to the same exemption from land revenue as the defaulter enjoyed. Government will no doubt think it inexpedient to continue exemptions in this way without any necessity, and the class of cases referred to by the Collector is therefore one calling for an express order under sections 56 and 214 (*e*). The Collector, when he has forfeited any such alienated holding, shall not sell it, but shall enter the land comprised therein in his records as unoccupied unalienated land, and deal with it under the law and the rules relating to land of that description. The arrear of *judi* will still be recoverable from the watandárs by any of the other means allowed by Chapter XI of the Code, and if not recoverable at all within what Government consider a reasonable period may, if Government think fit so to direct, be written off.

The loss of land appertaining to a watan will not necessarily involve the loss of the right of service. According to the definition in section 4 of the Bombay Hereditary Offices Act, "the watan property, if any, and the hereditary office and the rights and privileges attached to them together constitute the watan." There may still be a watan, although no partially exempt land is attached to it. Section 32 of the same Act enacts that "when watan property of profits has been voluntarily relinquished without abandonment of right of service, such right of service shall be dealt with as if the watandárs were still in receipt of such emoluments (G. R. 3016 of 10th June 1880).

Extent of Power under section 60.

Memo. by the L. R.:—The power of forfeiture conferred on Government by section 60 of the Hereditary Offices Act extends only to the particular watan in discharging the duties for which an offence has been committed. (G. R. 9728, 5th December 1884, R.D.)

Power of Government to resume Watan in hands of Strangers.

A watan being an estate held from Government is subject to special rules both as to devolution and as to the capacity for proprietorship. Government has usually bestowed it on a particular family with reference to the special fitness of that family on account of caste or social or political status for the performance of certain public services annexed as an obligation, though not as a condition to the grant. Enjoyment by that family is thus an essential element of the tenure. This being so, the tenure fails on the entail, so to speak, being broken and the property passing into the possession of one not a member of the family of beneficiaries. This is recognized in an important Full Bench judgment of the Bombay High Court, reported at pages 98—132 of the Indian Law Reports, IX, Bombay Series. If then the original family of watandárs have allowed themselves to be ousted so long or in such wise as that they can no longer assert their rights against the intruders, the result is not to destroy the latent ultimate right of the donor on terms as reversioner, *i.e.*, Government, but to bring the reversionary right into immediate operation. The ousted watandárs if they have conspired with the intruders have been guilty of a fraud on the donor tending to the destruction of the residuary estate, which is recognized as a ground of forfeiture of the tenure. If they have been put out by force or fraud or the operation of any particular law, their estate has simply perished and that out of which it was carved, (*viz.* the estate of Government) becomes integral again. The intruders cannot as against Government take advantage of the fraud or the negligence of the tenant watandárs so as to destroy the higher estate of the Sovereign except when the right of the latter is barred by limitation. Watan lands are also service lands, and Government under general rules may resume them at discretion (G. R. 6890 of 13th September 1889, R. D.)

Question as to whether Widow's own Heirs in absence of Husband's Heirs, succeed to Property inherited by her from her Husband in bar of Government's claim to escheat.

According to the general Hindu law as interpreted by recent decisions it seems clear that a widow's own heirs can never succeed to immoveable property inherited by her from her husband. See Mayne's Hindu Law, paragraphs 519—525, Bhugwandas *vs.* Mynabai, 11 Moore's I. A., 487, 513, and Collector of Masulipatam *vs.* Cavaly, 8 Moore's I. A., 529. But this like all other rules of Hindu law is liable to be overruled by proof of a special custom to a different effect; and the passages in Steel, 231, West and Bühler, 540 and 541, and the opinion cited at West and Bühler, 546, point to there being, in some parts at least of the Deccan, a custom under which a widow's own heirs do, in absence of any heir of her husband, succeed on her death to immoveable property inherited by her from him. (G. R. No. 6288, 27th August 1889, R. D.)

Resumption of Cash Allowances for Village Services no longer performed.

Memo. by Acting L. R. :—The Commissioner, C. D., questions whether Government Resolution No. 512 of 24th January 1882 and No. 6310 of 25th August 1883, authorize the resumption of cash allowances originally granted as remuneration to village servants useful to the community on attempted alienations thereof by the holders.

2. The resolutions in question do not expressly authorise such resumptions, as they mention only the resumption of land by levy of full assessment. But the intention of Government by implication appears to have been that the same rule should apply to cash allowances. The original reference on which these Resolutions were passed dealt with such cash allowances as well as with land, and after considerable correspondence, on which it was decided that the Bombay District Hereditary Offices Act should not be extended so as to apply to such offices, Government arrived at the conclusion that all the sanads which have been issued prohibited alienations of the property to which they relate.

Letter No. 741, dated 25th March 1881, from the Commissioner, C. D., quoted in the preamble of Government Resolution No. 2188, Revenue Department, 14th Apri 1881.

The Commissioner, C. D., in reply to Government Resolution No. 5705, Revenue Department, of 30th September 1881 reported that this condition was included in all sanads issued to village servants useful to village communities in all the Districts of his Division.

In his No. R.—4875 of 9th December 1881, *vide* preamble to Government Resolution No. 512, Revenue Department, 24th January 1882.

3. The Bombay Hereditary Offices Act undoubtedly has no application to such cases (*vide* Government Resolution No. 5705, Revenue Department, dated 30th September 1881), and if a cash allowance is conditioned on performance of service by a particular family, it is, I think, perfectly competent to Government to withhold it from any claimant outside the family of the original grantees. Under the Pensions Act (XXIII. of 1871) no suit could lie, should Government determine to withhold the allowance from the original grantee or from the person claiming as his transferee. (Indian Law Reports, 1 Bombay 80.)

4. In the instance referred to by the Commissioner, C. D., in paragraph 3 of his letter now under reference, a condition against alienation was expressly included. In that particular case the allowance was necessarily inalienable out of the family as it was attached to a religious office. Government could not of course be liable to suit in case they determined to resume such cash allowance, but such grants are not in their nature resumable (West and Bülher, page 398), "the holder of the office can be constrained if necessary to perform the duties when properly called on." Government could withhold payment from any alienee outside the family, but it would be contrary to the general principles of the Hindu law to withhold the emoluments of a *religious* office from the family of the original grantee. RESOLUTION.—The Governor in Council is pleased to direct that the orders contained in G. Rns. No. 512, dated 24th January 1882, and No. 6310 dated 25th August 1883, shall be regarded as applicable to cash allowances as well as to service lands. (G. R. No. 2643 of 5th April 1889, R. D.)

Resumption of Lands held for Service useful to the Village Community.

The terms of the settlement made in the case of village servants useful to the community should be held applicable to all cases in which their service lands have ceased to constitute the remuneration of such servants, and the lands should be resumed at once irrespective of the date of alienation.

It should be borne in mind that by resumption in such instances is only meant the levy of full assessment from the person in occupation other than the original grantee or his descendants. The present holders should therefore be allowed to remain in possession on payment of the full assessment to which the lands are liable.

If the original holders or their descendants have thought proper to alienate their lands in which they had only a life-interest and have thus deprived themselves of the remuneration provided for the performance of their duties, they themselves are alone to blame for their own action, and the Governor in Council does not consider them to be entitled to any consideration. The full assessment to be levied in the case of these alienations should accordingly be credited to Government (G. R. No. 6310 of 25th August 1883, R. D.).

By the orders in G. R. No. 3045, dated 16th June 1874, it was directed that when watandárs did not accept a commutation settlement, service up to the full value of the watan should be exacted. (G. R. No. 6260, dated 16th September 1887, R. D.)

Lands held by Non-Watandári Pátels.

When lands are held by non-watandári patels for service and have been alienated without the previous sanction of competent authority, they are resumable at the pleasure of Government. The Collector should therefore resume them and should assign to the officiating patel in each case so much of the land resumed, including the land in his own occupation, as may be required to provide for his remuneration according to scale. If any

surplus land remains after providing for the remuneration of the officiator, such surplus may be re-granted to the present occupants at survey rates.

The officiating patels should continue to be nominated by the Collector according to present custom, and they should be made to understand that they hold the lands assigned to them so long only as they continue to serve. It is not desirable to create new watan rights under Act III. of 1874 (G. R. 1170 of 5th February 1881.).

Alienations of Commuted Service Land.

Aliences of long standing should not be interfered with whether the settlement was made with them or not. (G. R. 656 of 23rd January 1885, R. D.)

Village Servants useful to community. Resumption on Alienation.

Bombay Act III of 1874 does not appear to be applicable to village servants useful to the community. All the sanads which have been issued to such servants prohibit alienation of the property to which they relate. Under the terms of the settlement, land which ceases to be held as remuneration for service to the village community may be resumed (G. R. 5705 of 30th September 1881, and 512 of 12th January 1882).

Where service is still required and performed.

A settlement was made, not with the Kázi's family, but with the family which, so long ago as A. D. 1805, had purchased the Kázi's land. The sanad granted to this latter family recognizes them as the holders of the land 'claimed as emolument appertaining to the office of Kázi,' and declares that that land shall be continued as the emolument of the office so long as the village community may require the services, on the conditions that the holders shall perform the usual services to the community and shall continue faithful subjects of the British Government.

2. If these two conditions are fulfilled and the village community still requires the services, the land cannot be resumed. The mere fact that the land is held by strangers is not a sufficient ground for resumption, when the settlement was made with those strangers and the conditions of the sanad are fulfilled by them. They of course cannot in this instance perform the duties in person, because they are Hindus; but if they perform the services vicariously, that is a sufficient compliance with the sanad, and the land may be said to be 'in the enjoyment of the persons who perform the services' within the meaning of paragraph 2 of Memorandum No. 966 of 21st July 1883, quoted in the preamble of Government Resolution No. 6310 of 25th August 1883 (G. R. No. 4996 of 21st June 1884, R. D.).

Collector's Procedure if he considers there are no heirs.

Memo. by L. R:—The provisions of section 36 of the Hereditary Offices Act prescribe the course which is to be observed by the Collector ordinarily, *i.e.*, when there are heirs of a deceased representative watandár and the only question is which of them is entitled to be recognized as representative watandár in the place of the deceased. For the uncommon case of there being no person in whom the right of inheritance appears to the Collector to vest, the section makes no provision; but in such a case the Collector, as the representative of Government, is clearly entitled to refuse to recognize any claim which he deems to be unfounded and to treat the watan or the share of the deceased representative watandár as lapsed

2. Section 22 of the Act shows that it was contemplated by the Legislature that watans or parts of watans will occasionally lapse to Government, and it cannot have been intended that under section 36 the Collector should be compelled to recognize the claim of a person to succeed as heir, merely because he produces a certificate of heirship, notwithstanding that the Collector may have good reason for questioning his title. A certificate of heirship is granted under Regulation VIII of 1827 upon a very summary inquiry and frequently *ex parte*. The Civil Courts themselves do not regard the orders passed in such inquiries as final; the person to whom a certificate is granted is merely held to be *primâ facie* heir.

3. In every case, therefore, in which the Collector considers that there is no person entitled to succeed to a watan or share of a watan, he is justified in declaring such watan or share of a watan lapsed. This declaration may be made by him as soon as his inquiries satisfy him on the point; but whether he should arrive at a conclusion and declare a lapse, of his own authority, or after reference to the Commissioner or to Government, is an administrative detail as to which it is open to Government to prescribe such rules as they think fit.

4. The declaration of a lapse and the appropriation of the watan or portion of a watan to which such declaration applies as the property of Government, will involve Government in liability to a civil suit at the instance of any person who deems himself entitled to succeed to the property as heir of the deceased, and there is no bar to such a suit except the twelve years' limitation rule. If therefore a person comes forward within the above period and lays claim to the property, his claim ought not to be set aside, because he did not appear sooner or because the watan or portion of a watan has already been treated as a lapse; but his claim ought to be enquired into as that of a person who may hereafter sue Government in the Civil Courts, and if he has obtained a certificate of heirship, that fact should be regarded as indicating that he has some evidence in support of his claim. Whether any such claim should be finally resisted or admitted depends, of course, upon the merits of each case. There is nothing in the Hereditary Offices Act that prevents its being admitted and the claimant's name being registered under section 36 at any time.

RESOLUTION.—As regards paragraph 3 above the Governor in Council doubts the necessity for any formal rules. Cases of the nature in question are very rare and a Collector may be trusted to exercise his own discretion in dealing with them, proceeding in the manner mentioned in paragraph 4 of the Legal Remembrancer's report. If any person whose claim is rejected is dissatisfied, he will naturally appeal to the Commissioner and to Government, and the propriety of the Collector's order can then be considered (G. R. No. 531, dated 19th January 1885, R. D.).

Illegitimate Sons of Sudras are Heirs.

Memo. by L. R :—Amongst Sudras the right of succession undoubtedly devolves on illegitimate sons, in the absence of legitimate sons, son's sons, or son's son's sons. I am not aware that watan property forms any exception to the general rule of succession in this respect (G. R. No. 104, 7th January 1885, R. D.)

Heirship, Claims to Certificates of—Government Pleader to be instructed.

In applications in the District Court for certificates of heirship in cases in which alienations of watans are liable to be perpetuated, or in which Government is otherwise interested, the Government Pleader should be instructed to watch the proceedings of each case, and the Collector should see that the evidence of heirship tendered is trustworthy (G. R. 945 of 15th February 1881).

Heirs—Sons by different wives.

In *Pedda Rámapa* vs. *Bangari Sheshaunna* (Indian Law Reports, 2 Madras, 286) the Privy Council distinctly held that there was no distinction between the son of a first wife and of any subsequent wife. It was held generally that 'among sons born of wives equal in their class and without any other distinction, there can be no seniority in right of the mothers'.

It is now settled law that the junior son of a first married Hindu wife takes no precedence over the senior son of a subsequent wife, if both wives are of equal class. (G. R. 2499, 21st March 1884, R. D.).

Meaning of the term "Nearest Heir" in section 36.

Report by L. R :—"The term 'nearest heir' which is used in section 36 of Bombay Act III. of 1874, is not a very accurate one: but looking to the fact that only one person's name can be registered in the room of that of a deceased representative watandár, whilst there may frequently be several co-heirs of the deceased person all equally near to him in relationship, the meaning of the Act is not, I think, doubtful. The context shows, I think, that what the section means is that the Collector should recognize as representative watandár the senior amongst co-heirs of the same degree of relationship and the nearest relation amongst heirs of different degrees of relationship. And by senior I do not mean the eldest in age, because a second or third wife is often older than her predecessor or predecessors; but I mean the one who, whether by birth or marriage, first acquired the status which gave him or her the right of inheritance. (G. R. 3530 of 2nd May 1884, R. D.).

Bom. V of 1886, section 2, Meaning of word "through". Daughters take absolute estate.

The word "through" in section 2 implies some intermediate links between the claimant and the last holder and does not apply to the case of a son claiming his mother's property as such. It can hardly be said that a person claiming direct from the last holder in whom the whole estate was vested claims through such holder.

The Full Bench decision of *Bhagirthibai* v. *Káhunjerai*, 11 I. R., Bombay, 285, decided that under Hindu law prevailing in the Presidency of Bombay a daughter inheriting from

either mother or father takes an absolute estate which passes on her death to her own heirs and not to those of the preceding owner. This decision overruled the opinion expressed in the case of Dulpat *v.* Bhagvan, 9 I. R., Bombay, 301, that daughters would not take such an absolute estate in cases governed by the Mitákshara, and lays down the law on the point for this Presidency. It follows that the law over the whole of the Bombay Presidency is that the heirs of a daughter on whom a watan had devolved before Act V of 1886 came into force will succeed to it on her death. (G. R. No. 2793 of 3rd May 1888, R. D.)

Recognition of Adoption when no notice given.

Memo. of L. R.:—"No doubt the words of section 35 of the Hereditary Offices' Act clearly prohibit the Collector from recognizing any adoption of which notice has not been given as provided in sections 33 and 34, unless upon production of certificate of heirship or of a decree of a competent Court establishing the validity of such adoption.

"2. Where there are, or are likely to be disputes amongst the watandárs themselves either as to the fact or as to the validity of an alleged adoption, this provision should, I think, be strictly enforced. But if the question affects nobody but the alleged adoptee and the Government, it is competent to Government, if they think fit, to dispense with the necessity for a strict compliance with the law, and when the adoption was made with the Collector's sanction and notice of it was not given under section 33 through oversight merely, there would be good reason for not insisting upon the observance of the letter of the law.

"On the other hand, if there is no dispute amongst the watandars as to the adoptee's claim he will have no difficulty in obtaining a certificate of heirship in the District Court. Some trouble and some expense are all that it will involve." (G. R. No. 6102, 30th July 1884, R. D.)

Sanction to Adoption by a Kulkarni.

The sanction of Government to an adoption by a kulkarni or his widow, or by a co-parcener in a kulkarniship or his widow, is not necessary to give it validity. (I. L. R., 1 Bom., 607.)

Adoption—Right of Adoptee to be registered.

Section 33 appears to have been intended to enact that if any watandár who is or was head of a family, or chief representative of a branch of a watandár family (or his widow), has adopted an heir before the Act came into force notice of such adoption must be given to the Collector within 12 months of the Act coming into force, and, if this is done, the adoption is conditionally recognized, and the right of the heir to be registered is admitted as if he had been a born son of his father by adoption. (G. R. 5559 of 24th September 1881.)

Posthumous adoption to deceased son of sole surviving male representative.

A sole surviving male representative of a pátil watandár family gave notice under Section 34 of Bombay Act III 1874 of adoption of an heir selected by his daughters-in-law. Strictly speaking, the terms of section 34 of the Hereditary Offices Act are not applicable to the circumstances of the case, because the adoption has not been made by a registered representative watandár or his widow. But the adoption has been made by the widows of the deceased son of the present representative watandár with his approval, and the adopted son becomes by virtue of the adoption the heir of the present representative watandár in preference to the widows who have adopted him, and if he survives him, will be entitled, under section 36, to be registered as representative watandár in his stead. In these circumstances the Collector should register the name of the adoptive boy as heir, on the ground that the provisions of the Act have been as nearly complied with as was possible.

Section 34 of the Act requires that the name of an adopted child should be registered by the Collector as heir merely. If notice of the adoption is made at a time when the adoptee is by virtue of his adoption at once entitled to be registered as representative watandár, he should be so registered also; but otherwise his registration as representative watandár will take place under section 36, only on the death of the existing representative watandár. (G. R. No. 5846 of 19th July 1884, R. D.)

Collectors to be guided by Judicial Decisions.

The Collector is not bound by the Hereditary Offices Act to accept a judicial decision as conclusive, but when the question which the Collector has to decide has been fought out in the civil Courts and a judgment of the highest tribunal has been passed, the Revenue authorities properly consider that they should be guided by that judgment. (G. R. No. 2949 of 27th April 1886, J. D.)

The Collector, the sole Judge as to right to officiate.

From the date of the coming into force of Bombay Act III of 1874, the civil Court cannot entertain a suit for a declaration of right to officiate as the sole representative of a branch of a watandár family, or that a person is eligible to officiate, the Act constituting the Collector a Judge for this and other purposes of the Act. (I. L. R., 2 Bom., 370 and 479.)

But Civil Courts can declare who is a Watandár.

Under Bombay Act II of 1874 as under the law antecedent to it, the civil Court has jurisdiction to entertain a suit to be declared a watandar (I. L. R., 8 B., 26; *see* also B. H. C. P. J. for 1888, p. 224) or to be regarded as the adopted son of a deceased watandár, but not for a declaration of a share in the watan and of title to entry of name in the watan register. (I. L. R., 9 B., 25.)

Alienation of Hereditary Office—its Effects and Registry.

The hereditary office being a part of the watan (*vide* definition of 'watan' in section 4 of the Hereditary Offices Act), the terms of section 5 apply to alienations of it. To a watandár of the same watan such an office may be alienated in perpetuity, or for life or any other term, at the owner's pleasure. If a representative watandár alienates in a lawful manner his right of service, the alienee becomes thereby 'the representative watandár' in his stead. Recognitions of transfers of hereditary offices should, therefore, be regulated by these considerations.

There ought to be no objection to substituting the name of the lawful alienee of a representative watandár in the register, if there is no question and no doubt as to the alienation and as to its legality. When there is any question between the parties as to the fact of the alienation, or as to its validity as against any of them, they should be desired to produce a decree of a competent Court under section 36 of the Act before any mutation of names in the register is allowed. (G. R. No. 2776 of 7th April 1883, R. D.)

Section 59 does not apply to cases of removal for ordinary misconduct under Section 57.

Section 57 of the Hereditary Offices' Act empowers the Collector to inflict minor punishments on an officiator for ordinary misconduct or neglect of duty and section 58 enables him, with the sanction of Government, to remove an officiator from office in 'case of fraud * * * or other grave misconduct.'

Section 7 of Act XI of 1843, and section 58 of the Bombay Hereditary Offices' Act do not, therefore, apply to precisely similar cases; and it would be hard to visit upon a watandár, who had been removed from office under the former section for ordinary misconduct or incompetency, the consequences which section 59 of the Hereditary Offices Act reserves for those removed from office for grave misconduct. Moreover there is nothing in the Hereditary Offices' Act which indicates that the legislature intended that removals from office under Act XI of 1843 should be equivalent to removals under the more restrictive provisions of the former Act. (G. R. 6518, 1st September 1883, R. D.)

Appointments under XI of 1843 unaffected by Bom. III of 1874.

All appointments lawfully made under Act XI of 1843 remain unaffected by the Watan Act No. III of 1874. (G. R. 515 of 24th January 1876.)

Probationary not contemplated by the Act.

Probationary appointments are not in accordance with the Act. The whole tenor of the Act is in the direction of making final appointments for fixed terms so as to prevent frequent changes and the trouble and local excitement they involve. (G. R. No. 4433 of 3rd June 1885, R. D.)

Section 45 as amended by Section 9 of Bom. V of 1886, Educational Test.

Joint letter from the Commissioners of Divisions, No. S. R.—12, dated 14th February 1888:—

We have the honour to report that we have considered, in committee, the question of the educational test to be prescribed for pátil officiators under section 45 (*b*) of the Hereditary Offices' Act as amended by section 9 of Act V of 1886, as also under section 30 (*c*) of the Gujarát Matádárs' Act VI of 1887.

2. As Government are probably aware, although no test was prescribed by the Watan Act before its amendment, it was usual, *as far as practicable*, to insist on an officiator being able to read and write simple characters or at least to sign his own name. More than this could not be expected in most cases, and we are

of opinion that any test which may now be prescribed under the sections above quoted should also be of the simplest character. Ability to read the Village Police Act, to write a short report on an ordinary matter, and to read simple manuscript may, for the present, be considered sufficient qualification, and the Collector should have the power to dispense even with this simple test in cases in which he considers it advisable to do so.

3. We do not think that any regular examinations need, or ought to, be held. A pátil's qualifications can always be ascertained prior to his nomination.

4. We will add that those Collectors who have been consulted on the subject express entire concurrence in these views."

RESOLUTION.—The views expressed by the Commissioners of Divisions meet with the approval of His Excellency the Governor in Council, and the educational test proposed by them should be enforced except in cases where the Collectors consider it unadvisable to do so. (G. R. 2718, 2nd May 1888, R. D.)

Alienation before Bom. III of 1874—Effect of adverse possession and res judicata on succeeding holders.

A mortgage or sale by a watandár of watan property, executed where Regulation XVI of 1827 was in force, was in its inception void against the heir of the said watandár, and did not become validated when Bombay Act III of 1874 repealed that regulation.

Adverse possession begins to run against the heir from the date of the death of the watandár. (I. L. R. (V.) Bom., 435 and 437.)

In the absence of fraud and collusion:—

(*a*) Adverse possession for twelve years during the life-time of one holder of service watan lands is a bar to succeeding holders and

(*b*) Judgment against one holder of service watan lands is *res judicata* as regards a succeeding holder. (I. L. R., 9 Bom., 198.)

Section 9, cl. 2, imperative.

Clause 2 of section 9 of Bombay Act III of 1874 is mandatory and not discretionary, so that if the part of a watan to which that section is applicable is land, it is compulsory and not optional for the Collector to recover and demand the full rent instead of transferring the possession. When the legislature intended that the cause to be adopted should be in the Collector's discretion, this is expressed in unmistakeable terms (*vide* section 11 of the Act). Although such expressions, as "it shall be lawful," are at first sight only directory or permissive, it has been so often decided as to have become an axiom that such expressions have a compulsory force, unless there be special grounds for a different construction. (G. R. 9506 of 26th December 1883, R. D.)

Maxwell on the Interpretation of Statutes, p. 219.

Section 10.—Watan property not assigned is liable to process, but Collector may remove process by certificate.

It is only watan property which has been assigned as remuneration of an officiator which is not liable to process of a civil Court, section 13 of Bombay Act III of 1874. With respect to the rest of the watan property, there is no provision in the Act exempting it from such liability, although the Collector under section 10 may, if he thinks proper, remove any process pending, and set aside any sale. (I. L. R., 9 Bom., 104.)

Section 10.—Certificate—to what Court to be sent. Limit of power to issue.

The Collector's certificate issued under section 10 should be sent to the Court by whose decree or order the watan is affected. The words "without the sanction of Government" qualify the whole section, and the Collector cannot issue his certificate when an alienation has been sanctioned by Government.

The Act does not authorize the Collector to issue his certificate in order to prevent the rectification of a subordinate Court's decree by the High Court, or the reinstatement of a person in possession of which he has been deprived by the execution of the erroneous decree of a subordinate Court. (I. L. R., 5 Bom., 284.)

Section 12 (a).—Powers of Collector on Appeal.

The terms of section 12 (*a*) of the Act are sufficiently wide to authorize the Collector to evict a person whom, on appeal, he considers his assistant has wrongly placed in possession

of the land under section 9 and to make over the land to the person to whom he decides it should be given. (G. R. 25 dated 28th March 1883 R. D.)

Certificate should not issue to prevent alienation to Watandar of the same Watan of "unassigned" property.

Memo. of the Acting L.R.:—It appears that Gopal Hanmant in 1863 obtained a decree of the civil Court establishing his right as hereditary deputy to obtain payment of a certain sum annually out of the income of the deshpánde watan. In execution of this decree a warrant has been issued to the Mámlatdár of Sholápur directing that Rs. 658, otherwise payable to the deshpánde Kondo during the present month, be attached, and forwarded to the Court for payment to Gopal Hanmant, the decree-holder.

The question now is whether the Collector should issue a certificate under section 10 of the Bombay Watan Act to set aside the civil Court's process.

In my opinion no such certificate can legally be issued.

The first part of the section refers to cases where watan property, assigned under section 23 as remuneration of an officiator, has passed after the Act came into force or may pass without the sanction of Government into the ownership or possession of any person other than the officiator.

This portion of the section is clearly inapplicable. It is not contended that the cash allowance attached has been assigned as remuneration for the officiator; and as no deshpánde service is now required there can apparently be no official remuneration.

The second part of the section provides that when it appears that any part of a watan or any of the profits thereof not so assigned has or have passed or may pass by virtue of or in execution of a decree into the ownership or beneficial possession of any person not a watandár of the same watan, the Court shall, on receipt of a certificate of the Collector stating that the property to which the decree or order relates is a watan or part of a watan or that such property constitutes the profits or part of the profits of a watan * * * *, remove any attachment or other process.

Under the second part of this section the Collector can only issue his certificate to prevent the watan or any portion of it passing into the hands of a person who is not a watandár of the same watan.

The question then is whether the decree-holder, Gopal Hanmant, is a watandár of this watan.

That question must be answered in the affirmative. It is true he is not registered as a representative watandár, as when he applied in 1880 to be so registered, the Collector held that as the deshpánde service was not required, no one could be recognized as representative watandár. With this decision of course the Courts cannot interfere, as it is a matter entirely within the cognizance of the Collector. But none the less Gopal Hanmant appears to be a watandár of this watan, though not registered as a representative watanádr. The distinction is explained in Rámchant *vs.* A'nant (Indian Law Reports, VIII Bombay, page 25).

In the Watan Act, section 4, a watandár is defined as a person having an hereditary interest in a watan. It seems hardly possible to hold that Gopal Hanmant has not such an interest. The decree of 1863 is not before me, but it is fully explained in the judgment of Westropp, C. J., in Miscellaneous Appeal 7 of 1876. It was there held that "Gopal's status as hereditary deputy watandár having been ascertained and established in 1863 is a fact which neither a Revenue nor a civil Court could ignore or re-open. It is a *res judicata*." The decree declared that he had an interest in the watan and was entitled to receive therefrom a certain sum annually. He therefore fulfils the definition of watandár given in the Act, and I do not think that any certificate ought to be issued under section 10.

It is true that one was given in 1875 which the High Court was unable to set aside though their Lordships supposed it was passed in ignorance of the terms of the decree of 1863; and now no doubt if a certificate were issued, the Courts would be obliged to act upon it.

But although such a certificate, if granted, would be effective, it of course cannot be issued otherwise than as prescribed by the Act, and in 1875 it must have been given under some misunderstanding.

It may be argued that the non-service settlement abolished Gopal's office of hereditary deputy. No doubt the occasion for his services has ceased. But his interest in the original watan was a species of property of which he could not be deprived by any arrangement between Government and the deshpánde to which he was not a party. "Service lands (or allowances) are a property, not merely a remuneration" (*vide* the remarks of West, J., on page 215 of Indian Law Reports, Bombay, IX.): and this principle seems to apply no less to the emoluments of the hereditary deputy than those of the original deshpánde.

For the above reasons I consider that no certificate can be issued in this case under section 10 of the Watan Act, and that the order of the Court should be accepted (G. R No. 4188 of 7th July 1887, R. D.).

Certificate only operates on the one execution it is issued to stop.

The Collector's certificate under section 10 of Bombay Act III of 1874 is exhausted in operating on the execution which it is issued to stop. A fresh certificate would be necessary to operate in fresh proceedings in execution (I. L. R., 9 Bom., 328).

Section 17—its Object.

Section 17.—The object of this section is to fix definitely what the emoluments should be, and the wording of it is such as to leave the settlement entirely in the discretion of the Collector, subject only to the restriction mentioned in the proviso. In order to preserve the variability of this kind of watan property, the Collector's settlement is, under section 21, a periodical one. In each instance as it occurs the Collector must determine what is fair adequate remuneration, due regard being had to the nature and extent of the service performed (G. R. 476 of 23rd January 1882).

Section 17.—Jurisdictin of Civil Courts as to Kulkarni's perquisites from ryot does not affect Collector's powers.

Bombay Act III of 1874 does not deprive the civil Courts of jurisdiction to try the question whether a watandár kulkarni is entitled to receive perquisites from his ryot, but no decree will affect the Collector's powers under section 17 of that Act, when he chooses to exercise them (I. L. R., XII Bom., 278).

Section 17.—Payments recoverable from persons occupying Inám land.

19. A tenant of an inámdár is a person "occupying immovable property free from assessment" within the meaning of section 17, and it is immaterial whether the cultivators do or do not pay rent to the inámdár (G. R. 7884 of 26th December 1881).

Section 18 only applies where the services are connected with civil administration.

Memo. by the Acting L. R. :—Under section 18 of Bombay Act III of 1874, Bombay Hereditary Offices, the term 'watan' applies only to hereditary offices, watan property, and rights and privileges attached thereto.

The term 'Hereditary Office' is limited to offices held for the performance of *duties* connected with the civil administration, whether those duties are now demanded or not.

The term 'watan property' is limited to property provided for the remuneration of such duties only.

Section 18 therefore does not apply to any *services* unconnected with the civil administration, nor does it apply to any remuneration for such services, or to any rights and privileges attaching to such services or to such remuneration.

Whether the duties connected with civil administration are now required to be performed or not, the section would not apply to any other kind of services demanded either by the village community or by individuals, the remuneration for which must be a matter concerning only those who perform such services and those who demand them.

RESOLUTION.—Care must be taken that the customary services, due from Mahárs under section 69 of the Watan Act in connection with village sanitation, are not treated as private service to individuals (G. R. No. 4273 of 28th June 1888 R. D.).

Section 23.—Presumption as to whether property has been assigned.

Memo. by the Acting L. R :—Subject to the provisions of the Watan Act and local custom the right of succession to watan property is governed by the ordinary law of inheritance.

In the present case Lála Chándkháń held the field in dispute from 1858-59 to 1878-79. After his death his son Guljár took possession and held it till 1882. The Assistant Collector then ejected him in favour of Edu—who had been appointed officiating pátil—on the ground that it should be presumed that the land had been assigned as remuneration for the officiator. The Collector reversed this order and restored Guljár.

The Collector's order appears to be correct. The Assistant Collector's opinion that it should be presumed that the right to the possession of land had been assigned as official remuneration is I think erroneous. The presumption is the other way. The ordinary law of inheritance from the last possessor prevails until the circumstances which require some other order of descent are proved. There is really no proof that this land was assigned as official remuneration. Such assignment could only be the result of a specific order or of general custom. As it is not suggested that the Government Records show any trace of an official order about this land, it may safely be assumed that none has ever

been passed. And as regards custom there is no proof that by it the land has been reserved for the officiator. It is true that Lála and Guljár held from 1858 to 1882 and that at the same time they successively officiated as pátils; but these facts are quite insufficient to establish the custom. To do so it would be necessary to show that for a very long series of years the possession of this land always went with the office irrespective of the ordinary law of descent, and that the existence of the custom was generally admitted by the family.

I do not think the imposition of extra *judi* on the land to make up the scale remuneration to the officiator, and the grant to the latter of a stipend in cash from the treasury affect in any way the right to possession of the land. Though the extra *judi* is indirectly paid to the officiator, the very most that can be said is that its imposition may amount to an assignment of part of the profits as official remuneration; but it cannot in my opinion be held to be an assignment of the land itself.

Apparently the appeal to the Collector was time-barred but as his order seems right on the merits of the case, I think it should be confirmed. Under section 79 of the Watan Act Government has power to dispose of the matter as it thinks proper (G. R. No. 3774 of 22nd June 1887, R. D.).

Watan, continuable as long as male heir exists, how to be entered.

As district watan lands and cash allowances in the Deccan and Southern Marátha Country were continuable by the sanads hereditarily to the holders and their heirs, as long as any male heir to the watan—lineal, collateral or adopted —shall be in existence, the watan property secured by the sanad should be entered in the Government records in the name of the male heir from time to time entitled to succeed to it. At the same time it is stated in the sanad that Government will not raise any objection or question in consequence of the watan property being held by any other person with the consent of the owners under the sanad, and this concession appears to His Excellency the Governor in Council to make sufficient provision for any rights of other persons than the male heirs (G. R. No. 1071 of 4th February 1885, R. D.).

Widow under Gordon's Settlement.

A widow under Gordon's settlement or the terms of the sanad has no right to succeed to the property, watan or cash payment; she can in no circumstances claim the latter or sue the Collector, if he pays it to the lineal male heir who does claim it (G. R. No. 10407 of 24th December 1885, R. D.).

According to the ordinary rule of Hindu law, a widow would inherit in a divided family. But the question is whether the widow is excluded from inheritance by the terms of a particular grant.

2. Government have decided to adhere to the view adopted on the advice of the Acting Legal Remembrancer in 1885 that male heirs only can be recognized under the sanads. The construction of the sanads is however a proper matter for adjudication by the civil Courts.

3. If a widow desires to sue the recognized male heir in order to establish her title to any watan property to which she may consider herself entitled, the Collector should grant her the certificate which would probably be required under the Pensions Act to enable her to institute the necessary proceedings (G. R. No. 1653 of 2nd March 1886, R. D.).

Gordon Settlement—widows have no claim.

The terms of the sanads granted under what is known as the Gordon Settlement are to be strictly adhered to. Widows can have no claim. Sections 10 and 11 of Bombay Act III of 1874 are applicable to such watans except in the cases in which the terms of that settlement expressly render the watan alienable without the consent of Government (G. R. 3279 of 2nd June 1876; 6070 of 8th October 1877; and 2915 of 23rd May 1881).

Claim to share in commuted service watan cognizable by the Courts.

There is nothing in Bombay Act III of 1874 or in Act X of 1876 excluding the jurisdiction of the civil Court in a suit to establish a right to share in the emoluments of a watan which has ceased to be a service watan (I. L. R., 5 Bom., 578).

Partition of Watan.

There is no general presumption in favour of the impartibility of estates such as a *deshgat watan*. When the watan is property appertaining to an hereditary office, a decree for partition does not prejudice the watandár's right to any income payable out of it for the performance of his duties (I. L. R., 4 Bom., 494).

Settlement under Section 15 cannot operate retrospectively.

No conduct on the part of the Collector making a settlement under section 15 of Bombay Act III of 1874 can act retrospectively so as to give a previous mortgage of a chowdri sirdeshmukhi and kulkarni watan a greater degree of efficacy than it had under Regulation XVI of 1827, section 120, the law in existence when the mortgage was created (Printed Judgments of 1882, p. 68, S. C. I. L. R. 6 B. 211).

Sanction of Collector to suit for Partition unnecessary.

Sanction of the Collector to the bringing of a suit for partition of a watan is not necessary (Printed Judgments of 1880, p. 292).

Partibility of commuted service watan.

A cessation (even though sanctioned by Government) of the performance of service attached to an impartible watan does not make it partible (12 B. H. C. R., 224).

Collector has no power to review his own decision.

A Collector has no authority under the Bombay Hereditary Offices' Act to review a decision passed by himself (G. R. 5922, 19th August 1886, R. D.).

APPENDIX A.

Government Selections CXXXII, New Series, contains Colonel Etheridge's interesting narrative of the Bombay Inám Commission, dated 21st April 1873, which Government ordered to be published as a valuable work of reference, and gives a good deal of useful information on the subject of summary settlements.

See also Colonel Etheridge's Preface to his List of Saranjáms.

The following extracts are taken from the judgment of the High Court, dated 12th June 1882, in a suit for partition of saranjám property, and will be found useful for reference* :—

In *Krishnarav Ganesh* v. *Rungrav et al.* *(b)* Westropp, C. J., said, "Sanadi grants in inám, saranjám, jághir, vazifa, wakf, devasthán, and sevasthán, are, generally speaking, more properly described as alienations of the royal share in the produce of land, *i.e.*, of land revenue, than grants of land, although in popular parlance, and in this judgment, occasionally so-called." This observation has frequently been quoted with approval, and the principle involved in it was the foundation of the decision in *Vaman Janardhan Joshi* v. *The Collector of Thána* (*c*), which has been followed in many subsequent decisions. In *Ravji Narayan* v. *Dadaji Bapuji* (*d*) Westropp, C. J., repeated his former observation as being undoubtedly true, though he qualified it by adding that "if words are employed in a grant, which expressly, or by necessary implication, indicate that Government intends that so far as it may have any ownership in the soil that ownership may pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass." He then added "In the *sanad* in evidence here, whosoever framed it, was apparently determined that no ambiguity should exist as to what the force of the term "village" might be; and in order to be explicit, he added to the grant of the village in *inám* the words "including the waters, the trees, the stones (including quarries), the mines, and the hidden treasures therein." Consequently, in that particular case the Chief Justice refused to hold the Pensions' Act applicable; remarking that "an enactment of a character so arbitrary as Act XXIII of 1871, which purports to deprive the subject of his right to resort to the ordinary Courts of justice for relief in certain cases, ought to be construed strictly, and the Court should not extend its operation further than the language of the Legislature requires." But the principle that grants in *inám* are ordinarily to be regarded as grants of land revenue, and nothing more, is in no way weakened by the decision in that case.

(*b*). 4 Bom. H. C., 1, A. C. J.

(*c*). 6 Bom. H.C., 191, A. C. J.

(*d*). Ind. Law Rep., 1 Bom., 523.

If this principle be true as regards grants in *inám* generally, it appears to us to be specially applicable to grants in *jághír* or *saranjám*.

Of these two terms Colonel Etheridge says in the Preface to the List of Saranjáms published by him as the same stood on the 1st August, 1874, "Under the Mahomedan dynasty such holdings were known as *Jághír*, under the Marátha rule as *Saranjám*. If any original distinctive feature marked the tenure of *Jaghir* and *Saranjám*, it ceased to exist during the Marátha Empire: for, at the period of the introduction of the British Government, there was no practical difference between a *Jághírdár* and a *Saranjámdár*, either in the Deccan or Southern Marátha Country. The terms *Jághir* and *Saranjám* are convertible terms in these districts. The latter is now almost universally adopted. These holdings, being of a political character, were not transferable nor necessarily hereditary, but, as a rule, were held at the pleasure of the Sovereign. On succession a nazrána was levied. When of a personal nature, they were termed *Jat Saranjám*, when for the maintenance of troops, *Fouj Saranjám*."

Colonel Etheridge's observation that jághírs were not necessarily hereditary hardly conveys a correct idea of the fact. It would have been more correct, if he had said that

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* Ramchundra Mantri *vs.* Venkatrao and B. Mantri, reported at I. L. R., 6 B., 598.

jághírs were not necessarily grants for life only, but might occasionally be hereditary. This is how the fact is stated by the Judicial Committee in *Gulabdas Jagjivandas* v. *The Collector of Surat* (*e*), where, their Lordships say that a *jághír* must be taken *primâ facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. Similarly, in the Fifth Report from the Select Committee on Indian Affairs (page 86) it was said: "With regard to the *jághírs* granted by Mahomedans, either as marks of favour or as rewards for public service, they generally, if not always, reverted to the State on the decease of the grantee, unless continued to his heir under a new *sanad*; for the alienation in perpetuity of the rights of Government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments to the religious establishments and offices of public duty, and in some rare instances of grants to holy men and celebrated scholars."

(*e*). Ind. Law Rep., 3 Bom., 186.

The circumstance that grants of this kind were ordinarily of so temporary a nature raises a presumption even stronger than that which exists in regard to ináms generally that the grants were ordinarily grants of the land revenue, and not of the soil. And the best authorities on the subject agree in so defining the nature of *jághírs* and *saranjáms*. Colonel Etheridge, in the Preface to which we have already referred, says: "It was the practice under former Governments, both Mahomedan and Marátha, to maintain a species of feudal aristocracy for State purposes by temporary assignments of revenue, either for the support of troops for personal service, the maintenance of official dignity, or other specific reason. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue, and to administer the general government of the tract of land which produced it. Under the Mahomedan dynasty such holdings were known as *jághir*; under the Marátha rule as *saranjám*." Professor Wilson in his Glossary defines *saranjáms* as "temporary assignments of revenue from villages or lands for the support of troops, or for personal service, usually for the life of the grantee; also grants made to persons appointed to civil offices of the State to enable them to maintain their dignity. They were neither transferable nor hereditary, and were held at the pleasure of the Sovereign." The term *jághir* he defines as "a tenure common under the Mahomedan Government, in which the public revenues of a given tract of land were made over to a servant of the State, together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district." Mr. Steele (Hindu Castes, page 207) says: "Grants by the Native Government in Jághír were either Fouj Saranjám, subject to the performance of military service, or Jat Saranjám, personal Jághír. The subject of these grants were the whole or particular portions of the revenues of villages belonging to the Sirkár * * * * *. Usually the grants depended on the pleasure of the Sovereign, and the fidelity of the grantee * * * * * * * *. They were not in general hereditary; sanads seldom exist; on the first grant it was usual to give the grantee a *Khat* or order addressed to the Government officers of the district." Mr. Neil Baillie, in his Essay on the Land Tax of India, says (page XLIV) "The Jághir is, properly speaking, an order upon the *Kiraj* of particular lands, which are said to be granted by way of Jághír. Two examples of it are given in the Appendix; and the terms in which they are expressed are worthy of attention. In both a sum of money, so many *lákhs* of *dams*, is said to be bestowed out of a particular pargana, the officers and inhabitants of which are directed to account for their just rents and dues of the Diváni (that is of the Civil Government) to the agent of the Jághírdár, up to the sum specified, from which they are forbidden to withhold or deduct a single *dam*." He then goes on to say: "Though the Jághír was, in form, an order for the payment of the *Khiraj*, there is no doubt that the Jághírdár was treated, in some respects, as the Zamíndár, or holder of the land. Thus No. IV. of the Appendix is a Perwanneh, addressed to the agent of a Jághírdár, in which he is required to do justice to a complainant; and though the purpose of the Jághír was to make a provision by an order on the revenue, yet this was said to be by way of Jághír, as if some holding or taking of the land itself was necessary to give due effect to this object. The Jághir is thus sometimes treated as an estate in land, not only in the Regulations, of the Indian Government but also in the decisions of the Courts of justice, and in this sense it is considered to be, essentially, an estate for life. There is reason however to think this view of the Jághír to be erroneous. As an order for payment of the *Khiraj* to a particular person, it necessarily fell to the ground on his death, unless some other persons, by name or description, were included in the grant. Such other persons might be his children: and if a *Jághir* were granted to a man and his children, there seems to be no just reason why it should not pass to them at his death; much less is there any just cause for suspecting the genuineness of a document constituting a *jághir*, because it contains such words as seems to have been done in the case above alluded to." We understand Mr. Neil Baillie as expressing in this passage a clear opinion that, although the etymology of the word *jághir* has sometimes given rise to the idea that the term involves a taking of land, or an estate in land, and although a *Jághírdár* has been treated as having some of the powers of a land-holder, yet, in fact, the grant is nothing more than an assignment of land revenue. And the case of *The East India Company* v. *Syed Ali* (*f*) shows that it was upon this ground that the Madras Government justified the resumption of jághírs, when it assumed the Government of the Carnatic in 1801. At page 575 of the Report

(*f*). 7 Moore's Ind. Apps., 555.

is the plea of the East India Company that "even when the language of the grants might seem to convey a proprietary interest in the soil, the grantees confessedly possessed no such interest, the subject-matter of the grant being a mere Jághír, or portion of public land revenue, together with the Government powers of collecting the same."

The authorities which we have quoted, (and none have been shown to us which support a different conclusion), may, we think, be taken as at least establishing that a grant in *jághir* or *saranjám* is very rarely a grant of the soil, and that the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. If it had not been that in the present case, in which there is no *sanad*, a Division Bench remanded the case for the taking of evidence, we should have been disposed to say that such a contention could not be made out by any evidence except such a *sanad* as was produced in *Ravji Narayen* v. *Dadaji Bapuji* already referred to.

The history of the manner in which Deccan *saranjáms* were dealt with by the Government of India and the East India Company, when it succeeded to the Government of the Peshwa, is succinctly stated in Colonel Etheridge's Preface. The correspondence cited by him shows clearly enough that, when on the advice of Mr. Mountstuart Elphinstone, then Commissioner at Poona, it was determined that all *saranjáms* granted prior to A.D. 1751 should be considered hereditary; this concession was made, not as of right, but as an act of grace and State policy, and the Government reserved to itself the power of determining, whenever occasions might arise, the nature and extent of its own bounty. This reservation of the power of Government has been recognised in all the legislations on the subject since Mr. Mountstuart Elphinstone, as Governor of Bombay, framed his Code of Regulations. Section 38 of Regulation XVII of 1827, provides that "land held exempt as *Jághír* shall be liable to resumption and assessment under the general rules at the pleasure of Government." This is explained in Clause 3, Section I, Regulation VI of 1833, which says "*Jághír* or other lands held on service tenure are declared to be resumable at the pleasure of Government, under the forms laid down in Clause First, Section 38, Regulation XVII, A.D. 1827, it being understood that the expression used in the said clause, *viz.*, "under the general rules" meant "such rules as Government may think proper to issue from time to time." Act XI of 1852, after providing for rules for adjudicating upon titles to exemption from payment of land revenue, says (section 10): "These rules shall not be necessarily applicable to Jághírs, *saranjáms* or other tenures for service to Government, or tenures of a political nature, the title and continuance of which shall be determined, as heretofore, under such rules as Government may find it necessary to issue from time to time." So, in Bombay Act II of 1863, which was an Act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land revenue in those parts of the Bombay Presidency, which are subject to the operation of Act XI of 1852, Section 1, Clause 2, says: "The excepted cases, to which the authority of adjustment and guarantee vested in the Governor-in-Council by this provision shall not extend, are the cases of lands held as follows:—

1*st*. * * * * *

2*nd*. Lands granted or held as Jághírs or Saranjáms, or on similar political tenure.

And then, lest any question should be raised, (as was attempted to be raised in the argument in this case), whether the mere order of Government that land should be entered in the accounts under the heading "Political" is conclusive as to the political character of the grant, section 16 of the Act goes on to say: "'Political tenure' is defined to be tenure created from, or dependent upon, political considerations, the existence of which shall be determined by the Government." So, in Bombay Act VII of 1863, which is a similar Act relating to districts not subject to the operation of Act XI of 1852, Section 2, Clause 2, provides that "lands granted or held as Saranjám, or on similar political tenure, shall be resumable or continuable in such manner, and on such terms as Government, on political considerations, may from time to time see fit to determine;" and section 32 contains a definition of the term "political tenure," similar to that which we have quoted from Bombay Act II of 1863. The Regulations and Acts which we have cited show beyond all question that it is for the Government to determine how *saranjáms* are to be held and inherited, and that, if the Civil Courts had jurisdiction over claims relating to Saranjáms, they would be bound to determine such claims according to the rules laid down by the Government. It would, therefore, be useless to refer, as in this case we have been referred, to evidence tending to show that under the Native Government, the ancestors of the parties dealt with their Saranjám villages as if they were proprietors of the soil, and partitioned the villages among their families. The questions which the Courts would have to consider would simply be, what are the terms of the grant by which the British Government continued the Saranjám? and what is the rule of succession laid down by the British Government for *saranjáms* in general, or for this *saranjám* in particular?

It would appear that, under "the Saranjám Rules" an hereditary Saranjám is considered by the Revenue authorities to descend entire to the eldest representative of the last holder and that, if the eldest son predeceases his father, his son takes precedence of the next surviving son of the last holder.

We have been informed that the only rules are those contained in the Preface to Colonel Etheridge's List of Saranjáms, to which we have so repeatedly referred. As the Regulations and Acts which we have quoted contemplate that *jághírs* and *saranjáms* should be continuable

under general rules to be issued from time to time by Government, it seems strange that no rules should be forthcoming, bearing the authorisation of the signature of a Secretary to Government. We, must, however, take it that Colonel Etheridge speaks, under the authority of Government, when he says in the Preface to which we have been referred, that succession to Saranjáms is restricted to lineal male heirs in the order of primogeniture; and that the eldest son is the heir in the first instance. Colonel Etheridge says that in Saranjáms of the second class, if the eldest son of the first British grantee die before his father, but leave a son, that son, on his grandfather's death, is to be considered the second generation, and the whole Saranjám will be continued to him. But curiously enough, Colonel Etheridge does not say whether the same rule of succession would be applicable to hereditary Saranjáms; and on this point, therefore, we are left without any distinct rule. The rule to which the Revenue Commissioner referred in 1865 as giving to the son of a predeceased eldest son a preference over his uncle is not forthcoming in the Secretariat; nor does Mr. Nairne in his Handbook mention any such rule, except that which we have already quoted from Colonel Etheridge's Preface, as applicable to Saranjáms of the second class. In the absence of a rule made by Government, the Courts would, if they had jurisdiction in the matter, be obliged to decide according to the ordinary rule of Hindu law applicable to impartible property; and although, as stated by Mr. Mayne in his work on Hindu Law (section 461), there is rather a want of authority as to the rule to be adopted where an eldest son, who has never taken the estate, has died leaving younger brothers, and also a son, yet the Courts would probably hold that the grandson took in preference to his deceased father's eldest surviving brother.

As regards the question of the impartibility of a *saranjám*, the rule stated by Colonel Etheridge is in accordance with the orders conveyed in a despatch from the Court of Directors, No. 27, dated 12th December 1855. In para. 20 of that despatch they say: "We agree with you that Saranjáms should not be sub-divided, but that the holders should be required to make a suitable provision for their younger brothers." A *jághír*, to which service is attached, is certainly not divisible, but descends to the eldest son —*Hurlall Singh* v. *Jorasvun Singh*,* cited with approbation by Lord Kingsdown in 6 Moore's Indian Appeals, 125, and *Rajha Nilmoney Singh* v. *Bakranath Singh*, decided by the Privy Council, 10th March 1882. There is some evidence in the present case that the *Saranjám* was originally given for the maintenance of a body of horse, and was, therefore, in its inception a *jághir* held for service. But independently of this and of any Government rule, the same principle would probably be applied to all *saranjáms* on the ground stated by Mr. Mayne (Hindu Law, Section 393), that an estate, which has been allotted by Government to a man of rank for the maintenance of his rank, is indivisible as otherwise the purpose of the grant would be frustrated.

* 6 Calc. S. D. 169, 204.

APPENDIX B.

No. 6018.

Extract from the proceedings of the Government of Bombay in the Revenue Department, dated the 25th October 1875.

READ the undermentioned papers:—

Letter from J. E. Oliphant, Esq., Acting Revenue Commissioner, S. D., to the Chief Secretary to Government, No. 5, dated 4th January 1875.

In continuation of my Memorandum No. 4307, dated the 24th November last, I have the honour to request you will favour me with the instructions of Government as to the course to be followed in cases in which the watan lands belonging to district hereditary officers and subjected to the summary settlement are purchased by parties (not members of the watandár's family) at auction sales under decrees of the civil courts. Such purchasers frequently make applications to have the lands entered in their names in the Government accounts, and the question for consideration is, whether or not their applications should be complied with.

2. As the right of Government to exact service from the lands in question has been commuted under the settlement effected by the late Mr. Gordon, I see no objection to enter the lands in the purchaser's names on their agreeing to pay in future the additional nazrána of one anna for each rupee of the assessment, as prescribed for adoptions out of the family of watandárs.

Memorandum from Colonel A. T. Etheridge, C. S. I., Alienation Settlement Officer, S. D., No. 28, dated 15th January 1875.

Referring to Government endorsement No. 163 of 12th instant, Colonel Etheridge has the honour to observe that he is very doubtful whether a purchaser's name should be entered in the Government accounts, as suggested by the Revenue Commissioner, in the case of a district watan disposed of at an auction. It seems to the Alienation Officer that the terms of the sanads issued under Mr. Gordon's watandári settlement will scarcely admit of this course. As there is a doubt, the question might perhaps be referred to the Legal Remembrancer.

Report by J. R. Naylor, Esq., C. S., on special duty, No. 176, dated 8th May 1875.

Clause 2, Section 15, Bombay Act III of 1874 (the Hereditary Officers' Act), enacts that any settlement for commutation of service made with the holder of any watan before that Act came into force, shall have the same force as if made under that Act. And clause 1 of the same section enacts that such settlement may be made "upon such condition whether consistent with the provisions of this Act or not, as may be agreed upon." The effect of this appears to be to legalise any terms that may be, or may heretofore have been, mutually agreed upon between Government and the holder of a watan, even though such terms may not be consistent with the provisions of the Act. But watan property does not cease to be watan property, because the duties, for the performance of which it was originally acquired have been commuted for a money payment, and unless there be something in the terms of the commutation settlement inconsistent therewith, the law ordinarily applicable to such property still applies to it, I think, notwithstanding that Government have dispensed with the necessity for service.

2. Under this view, I am of opinion that section 5 of Bombay Act III of 1874, which enacts that "no watandár shall, without the sanction of Government, sell, mortgage, or otherwise alienate or assign any watan or part thereof, or interest therein, to any person not a watandár of the same watan," is applicable to the watans of district hereditary officers whose liability to service has been commuted for a money payment, because, as far as I am aware, there is nothing in the settlements entered into with them to the contrary. I say as far as I am aware, because I find from Colonel Etheridge's narrative* of the Inám Commission (latter part of para. 69) that the sanads which have been issued "are not only not the same throughout the Presidency, but are not the same in all respects in the same division."

3. The only form of sanad which has come to my notice is that sanctioned originally by Government Resolution No. 2871, dated 25th August 1863, in the Revenue Department, for Poona and Sátára. The former portion of it has been since somewhat changed on the recommendation of the Legal Remembrancer, but the essential portion would appear from the standard form (Sanad 14), recently printed at the Central Press, after being sent to me for revision (*vide* Government Memorandum No. 4958, dated 16th September 1874), to have remained intact. It is as follows :—

"It is hereby declared that the said lands and cash allowances shall be continued hereditarily by the British Government, on the following conditions: that is to say, that the said holders and their heirs shall continue faithful subjects of the British Government, and shall render to the same the following fixed yearly dues :—

	Rs.
Mámul Judi	
In lieu of service	
Total ...	

"In consideration of the fulfilment of which conditions—

"1*st*.—The said lands and cash allowances shall be continued without demand of service, and without increase of land tax over the above fixed amounts, and without objection or question on the part of Government as to the rights of any holders thereof, so long as any male heir to the watan, lineal, collateral, or adopted, within the limits of the watandár family, shall be in existence.

"2*nd*.—No nazrána or other demand on the part of Government will be imposed on account of the succession of heirs, lineal, collateral, or adopted within the limits of the watandár family, and permission to make such adoptions need not hereafter be obtained from Government.

"3*rd*.—When† all the sharers of the watan agree to request it, then the general privilege of adopting at any time any person (without restriction as to family) who can be legally adopted, will be granted by Government to the watan, on the payment from that time forward in perpetuity of an annual nazrána of one anna in each rupee of the above total emoluments of the watan."

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* Bombay Government Selections, No. CXXXII., New Series, p. 50.

† In condition 3 of the conditions embodied in the form of sanad issued to District Hereditary Officers, &c., the words 'all the sharers of the watan' should be interpreted literally. There is nothing in the sanad to indicate that only the sharers whose names are entered in the Collector's records are meant." (G. R., R. D., No. 5854, dated 16th August 1886).

Adoption by widow Memo. by L. R.:—A cash allowance stood in the name of Daryábái, widow of Jayavantráo Shitole Deshmukh. But in January 1882 the Commissioner directed that the name of Bábáji Khanderáo should be substituted for that of the widow, he being a collateral who, in the state of the family as it then existed, would succeed as nearest heir on the death of the widow.

Since then, however, the widow has made a lawful adoption from within the watan family. It is evident from the form of sanad issued to district hereditary officers in the Poona District, in confirmation of the service commutation settlement made with them by Mr. Gordon that Govern-

The above conditions, so far from being inconsistent with the provisions of the Hereditary Officers' Act, are, it seems, in strict accordance with section 5 of it, which prohibits a transfer of the watan property to any person not being a watandár of the same watan. And if the same conditions are contained in all the sanads alluded to by Colonel Etheridge, the variances being in other details only, I am of opinion that no portion of watan to which any such sanad applies can be alienated to any person other than a watandár of the same watan without the sanction of Government, and that the Collectors may lawfully, in case of any such alienation in the future, have recourse to the powers given to them by sections X. and XI. of the Act, and in the case of alienations effected before the Act was passed otherwise than by the intervention of the courts, to the powers given them by section IX. of the Act.

4. It cannot, I think, be said that the property of any watan to which a sanad containing the above conditions has been given, has been thereby converted into *private property* in the usual wide sense of that term, and if I am correct in supposing that similar conditions have been inserted in all such sanads, I would respectfully suggest that the latter part of the 1st para. of Government Resolution No. 4248, dated 24th July 1873, might perhaps be modified with a view of removing possible misunderstanding. The closing part of the Collector of Dhárwár's Memorandum of the 10th October 1872,* to which the Hon'ble Colonel Anderson took exception in para. 5† of his No. 970, dated 1st July 1873 (*vide* Compilation No. 1063 of 1873), appears also to have been correct, whilst the latter's views are certainly not in accordance with those expressed in para. 4 of Government Resolution No. 3167, dated 19th September 1863.‡

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ment have recognized the right of succession in virtue of such adoptions and therefore that the widow's adoptive son has a preferential claim to the allowance over collaterals. Had the adoption taken place previous to Jayavantráo's death, the allowance would have been entered in the adoptive son's name in lieu of his without the least hesitation. A boy adopted by a widow has, according to Hindu law, precisely the same status as if he had been adopted during the widow's husband's life-time. I am of opinion therefore that the adoptive boy's right should be recognized by the Collector and that his name should now be entered in the records in lieu of Bábáji Khanderáo's. (G. R. No. 10054, dated 22nd December 1884, R. D.)

*"The above rules (proposed for the collection of judi on inám holdings) will apply to all kinds of ináms in this district with such few modifications as would be necessary according to the different conditions under which the ináms may have been continued; for instance, in the case of the district hereditary officers' lands, the same rules would apply, with this exception, that the transfer contemplated in the rules should not be permitted when the transferee is some person out of the watandár's family; this is necessary, as these watans have not been made transferable private property." (Mr. E. P. Robertson, Collector of Dhárwár's Memo. dated 10th October 1872.)

†"The rules proposed by the Collector of Dhárwár would act beneficially beyond all doubt, and with a definition of the share of each sub-inámdár, would give a much more secure and comfortable tenure to all inámdárs, freeing them from all chance of molestation from the misdeeds or machinations of their co-sharers; but Colonel Anderson cannot agree with the closing part of the Collector's memo. of the 10th October 1872, in making district hereditary officers' lands only an exception. It would appear very inexpedient to allow the permanent transfer to any person, not of the office family, of any lands now held on service tenure. When all liability for service has been commuted no such objection exists. It would be far preferable, considering their present status, to allow district hereditary officers to do what they please with their lands than to grant the same liberty to the patels and kulkarnis, which, however, does not appear to be objected to by the Collector of Dhárwár. To facilitate the scattering of patels and kulkarnis' land would be a political as well as an administrative error, while it appears by no means certain that the same measure would not be a political advantage in the case of the district hereditary officers whose service is no longer required, and whose ancient family influence, which is still very great and little to the advantage of Goverment, would be decreased by the dispersion of their lands." (Colonel Anderson's Memo. No. 970, dated 1st July 1873.)

‡ "With reference to paragraphs 26 to 29 (of the Watan Commissioner's report), the Governor in Council agrees with Mr. Hart (*vide* extract (*a*) para. 4 of his report given below) in accordance with whose views the point therein referred should be disposed of. With a view to give practical proof of the desire of Government to increase rather than to diminish the share which those officers have hitherto had in the efficient administration of the country, Government will be glad to receive from the Commission list of any of these Hereditary officers whom they, after consultation with the Collectors, would recommend to be gazetted as Honorary Magistrates, together with a draft of any rules they may think it desirable to lay down for regulating the proceedings of such officers in the execution of their functions. Great care should be taken in the selection of officers with regard, not only to their personal character and social position, but their capacity to appreciate the honour done to them and their class by their selection." (Government Resolution No. 3167, dated 19th September 1863, para. 4.)

(*a*) Extract para. 4 of Mr. Hart's Report above referred to :—"There is only one other point on which the Revenue Commissioner considers any remark beyond the notice of his general concurrence necessary, and this is not a point of any importance as regards the financial part of the settlement. In paragraph 28 of the Special Commissioners' letter, they mention the desire of the zamindárs, that in order to keep up the recognition of the consideration in which they have been hitherto held by the community, 'they should be considered to have a right to sit in the kacheri.' This ought not to be assented to in such terms as to recognise their rights to frequent the Mám-

5. I should add that a similar question to that on which I am now reporting has been raised in the suit marginally noted, the defence of which was sanctioned in Government Resolution No. 5510, dated 17th October 1874, and in adverting to para. 9 of my Report No. 158, dated 13th October 1874, upon this suit, I must explain that sections V and IX of Bombay Act III of 1874 have placed the law as to the inalienability of watan property in a much clearer light than the vague provision of clause I., section 20 of Regulation XVI of 1827 did.†

IN THE DISTRICT COURT OF POONA.
Original No. 2 of 1874.
*Náro Dámodar Ghugri.
vs.
The Collector of Poona.

Memorandum from Aderji Jamsetji, Esq., Acting Alienation Settlement Officer, N. D., No. 306, dated 14th June 1875.

The queries put in Government Memorandum No. 2824, dated 17th May 1875, to the Revenue Commissioner, N. D., are :—

(1.) Whether the same conditions have been entered in the sanads issued to the watandárs in the districts of the Northern Division as those stated by Mr. Naylor?

(2.) Whether the entry of the names of purchasers of watans is not permitted in the Northern Division?

2. As regards the first query, the undersigned begs to append a memorandum showing the conditions of the sanads issued to the watandárs in the different Collectorates of Gujarát.

3. In the remaining Collectorates of Khándesh, Násik, Thána and Kolába, the conditions of the sanads issued to the watandárs of those districts are the same as those stated by Mr. Naylor.

4. With respect to the second query, the undersigned begs to state that the entry of the names of purchasers of watans in the districts of Surat, Broach and Kaira has been permitted. A specimen of such entry is given below :—

"Haridás Navalrám, purchaser of Dhanshankar Lakhmishankar's hak."

5. Applications for the entry of the name of a purchaser or mortgagee of the watan mentioned in para. 3 of this memorandum have been rejected by this department.

6. The conditions of the sanads issued to the watandárs of the Ahmedabad District admit of a purchaser's name being entered, provided the watandárs have agreed to the payment of an annual názrána of one anna in each rupee of the total emoluments of the watan.

Conditions of the Sanad granted to the District Hereditary Officers of Surat and Broach as per Government sanction No. 3929, *dated* 14*th November* 1867.

"The watan, of which the share specified in the schedule below given is a part, as now confirmed, shall be continued (subject to the condition of loyalty to the British Government on the part of the holders thereof) by the British Government without demand of service, and without any further deduction therefrom on that account, or any objection or question on the part of Government as to title, to whomsoever shall from time to time be the lawful holders thereof, but without affecting the rights and interests of other parties."

Conditions of the Sanad granted to the District Hereditary Officers of Ahmedabad as per Government sanction No. 234, *dated* 17*th January* 1867.

"1*st*.—The watan, as now confirmed, and below specified, shall be continued (subject to the condition of loyalty to the British Government on the part of the holders thereof) hereditarily without demand of service, and without any further deduction therefrom on account of service, and without objection or question on the part of Government as to the rights of any holders thereof, so long as there shall remain in existence any legal heir to the watan, whether lineal, collateral, or adopted, within the limits of the watandár's family, and whether descended in the male or female line.

"2*nd*.—When all the recorded sharers in the watan agree to request it, the general privilege of adopting at any time any person out of the watandár's family, who can be legally adopted, and of transferring the watan or any recognized share thereof, by sale, mortgage, &c., as private property, will be granted by Government to the watan on the payment from that time forward, in perpetuity of an annual nazrána of one anna in each rupee of the total emoluments of the watan as now confirmed, and from the date of the imposition of this

latdárs' kacheris, or interfere in the kacheri work, at their own pleasure, which might cause great inconvenience and abuses of various kinds, but that when they do attend, in pursuance of invitations such as are contemplated at the close of the Special Commissioners' 28th paragraph, or in pursuance of any legitimate business, they shall be treated with no less consideration in such matters, as being allowed to be seated, &c., than they have hitherto been. The Revenue Commissioner believes that this is what is intended by the Special Committee, but has considered it right to notice the matter, trivial as it may appear, more particularly than they have done." (Mr. Hart's Memo. No. 2302, dated 24th July 1863.)

*This suit was held barred by the Pensions Act XXIII of 1871—*Vide* I. L. R. 6 B. 209.
† *Vide* now section 5 (2) as amended by Bo. V of 1886.

nazrána the whole watan, or the recognized shares thereof, will be converted into private property, heritable and transferable in all legal modes."

Conditions of the Sanad granted to the District Hereditary Officers of Kaira as per Government sanction No. 2376, dated 16th May 1872.

"This sanad is accordingly issued; and it is hereby declared that the emoluments of the said watan specified below shall, as now confirmed, be continued, (subject to the condition of loyalty to the British Government on the part of the holders thereof) by the British Government in perpetuity, without demand of service or any further deduction therefrom on that account, and without any objection or question on the part of Government as to title, whether it shall have accrued in virtue of inheritance, adoption, transfer, or otherwise to whomsoever shall from time to time be the lawful holders thereof, but without affecting the rights and interests of other parties."

RESOLUTION.—The question raised by Mr. Oliphant is a very important one, and requires definite orders. But owing to the variety of agreements which have been made with watandárs and to other causes, no distinct ruling of general application has yet been laid down.

2. Government are inclined to think that the rule laid down for Surat and Broach in Government Resolution No. 4425 of 16th December 1867 (a copy of which will be found in the précis attached), is the one which should be adopted everywhere, viz., that Government will not question alienations by district hereditary officers who have accepted the settlement, but that this course does not prevent parties interested from suing to set aside alienations as illegal. In that case it would be as well to forego the right to claim a nazrána of one anna on alienations or adoptions in which this has been stipulated for in the sanads. The amount of nazrána to be lost will be very small. If this course were adopted, the rule would be that the Collector should enter the names of aliences, if not objected to by the watandárs, on which point inquiries should be made. If the watandárs object, the Collector would refuse to make the entry, and leave the parties to obtain decision from the Civil Court.

3. Government will, however, feel obliged by the Revenue Commissioners considering the important question at issue thoroughly, and favouring them with their opinion upon it. Government would wish to be informed, at the same time, how far the condition has already been enforced of payment of nazrána where such a provision has been inserted in the sanads, and whether any complications would follow the abandonment of it.

4. Mr. Naylor should be asked his opinion whether, if the question were decided in the manner indicated, it would be necessary to issue new sanads, or whether the decision would be a mere concession which the watandárs cannot object to; in other words, would an order merely directing the Collectors not to enforce certain stipulations in the sanads be objectionable?

5. Mr. Naylor should forward duplicate copies of his report to the Revenue Commissioners as well as to Government, in order that the Revenue Commissioners may have the benefit of his opinion when submitting their reports.

No. 3279.

REVENUE DEPARTMENT.

Bombay Castle, 2nd June 1876.

Letter from Mr. J. R. Naylor, C. S., on Special Duty, No. 21, dated 7th January 1876. Letter from the Revenue Commissioner, S. D., No. 1333, dated 20th April 1876. Letter from the Revenue Commissioner, N. D., No. 3133, dated 20th May 1876.	Replying to Government Resolution No. 6018, dated 25th October 1875—Calling for opinion on the question as to the advisability of permitting alienations or adoptions out of the families by district hereditary officers who have accepted the watan settlement, without payment of nazrána.

RESOLUTION.—His Excellency in Council does not think it would be expedient to forego the nazrána of one anna, and it seems to him that the method least likely to cause difficulty would be to adhere strictly to the terms of the sanads in each case.

APPENDIX

Extract from reports of the Acting Legal Remembrancer, quoted in Government Resolution No. 2318, Revenue Department, dated 8th April 1882.

"Government have decided on several occasions that a daughter married out of a watan family is not by reason of such marriage divested of her rights and does not lose her status as watandár.

"2. In the present instance it appears that the petitioner has already been recognized as representative watandár, and that under section 51 of the Bombay Hereditary Offices Act, 1874, she appointed her husband to be her deputy. As section 53 of that Act provides that none but a watandár shall be appointed as deputy, the question is whether the petitioner's husband can be deemed to be a watandár, that is, 'a person having an hereditary interest in a watan' within the meaning of that section.

"3. The answer to this question must depend upon the decision of the other important question whether the watan property which a daughter inherits from her father is stridhan, and, therefore, transmissible to her heirs, or whether it is a limited and restricted estate only, that is to say, which she is entitled to enjoy for her life-time, and on her death devolves on the line of the last male owner, her father.

"4. If the watan is regarded as stridhan, it seems clear from the best authorities that on the death of the daughter her children are entitled to inherit it, and if she has no children, her husband will be her heir and on failure of him his nearest sapindás, which term includes, on the father's side, all blood relations within six degrees together with the wives of the males, and on the mother's side, those within four degrees. Consequently no objection could be taken to the appointment of the watandár's husband or one of his relations within those degrees as her deputy.

"5. There is, however, a very great difference of opinion on the subject. The Bombay High Court have ruled that according to Hindu law on this side of India property inherited by a married woman from her father descends on her death to her own and not to her father's heirs (*see* I. Bombay High Court Reports, 209). Subsequently the same Court held that the property acquired by a married woman by inheritance, with the exception of property inherited by a widow from her husband, classes as stridhan and descends accordingly (*see* 6 Bombay High Court Reports, 1). Lastly it was decided in an elaborate judgment by Mr. Justice West (8 Bombay High Court Reports, 244) that the Mitákshara (which is the highest authority in this Presidency) recognizes only one class of stridhan and includes in that class *all* property acquired by a woman by inheritance, and if she has been married according to one of the approved forms, on her death childless, descends to her husband and his sapindás; but over stridhan acquired by inheritance her power of alienation is limited. So, too, in the latest case reported in Indian Law Reports (III. Bombay, 171) the Chief Justice (Westropp) held that the daughter had succeeded not to a qualified estate but to an absolute and several estate in her father's immoveable property.

"6. On the other hand the rulings of the High Courts of Calcutta and Madras are quite opposed to the Bombay rulings, and have been entirely approved of by the Privy Council in Chotay Lall *v.* Chimno Lall (6 Law Reports Indian Appeals, 15). In Commenting on Mr. Justice West's judgment the Chief Justice of the Calcutta High Court in this case pointed out that there was no substantial difference of opinion on the law between the Calcutta and Madras High Courts, and that they ought not to unsettle the law which had been received for the last fifty years on account of the opinion of a judge of the High Court at Bombay, however learned he may be. The Privy Council observed that the question of the daughter's estate cannot be considered as 'res integra'; that the result appears to be that the Courts in Bengal and Madras have determined in a series of decisions that the daughter takes a qualified estate only, whereas in the Courts of Bombay there have been rulings and *dicta* in favour of the view that she takes the entire property. But 'their Lordships do not think it necessary, especially after their own decisions as to widows' estates, to go into an examination of the Indian cases. They agree in the conclusion of the Calcutta High Court affirming the law as stated by Sir William Macnaughten, that immoveable property acquired by a daughter by inheritance, on her death in default of issue male, goes not as stridhan to her husband or other heir but reverts to her father's heirs.

"7. It must be observed that this difference of opinion rests on a different interpretation of old and obscure texts. The original text of the Mitákshara, it is stated in the above judgment of the Privy Council, does not afford any foundation for the argument in favour of the right of the daughter to the entire interest in land acquired by inheritance, though the interpretation of the commentator, Vijnáneshvar, on which Mr. Justice West's reasoning rests, does. It seems, therefore, that there is a preponderance of decisions against the Bombay rulings. What would be the result of an appeal to the Privy Council from this Presidency it is not easy to say. Mr. Justice West observes that it is reasonable to suppose that in such case his arguments would have much weight with their Lordships. In the Calcutta appeal, however, the Privy Council had an opportunity of weighing the Bombay rulings as they are carefully reviewed in the judgment of the Chief Justice Couch which was on appeal before their Lordships. The conclusion come to by their Lordships is that it was unsafe to open the question and unsettle a rule of inheritance affirmed by a long course of decisions.

"8. The question of course now is whether Government should follow the law as stated by the Bombay High Court or as it is stated by the High Courts of Bengal and Madras, and recognize the female watandár's husband or his relative as having an hereditary interest in the watan.

"9. In deciding this question it must be remembered that the Bombay rulings extend over a period of some twenty years and were laid down by Judges whose reputation for learning is beyond all question—Sir Mathew Sausse, Sir Joseph Arnould, and Mr. R. West, and have been followed and accepted as the law by the people of this Presidency. The Bengal and Madras rulings, though entitled to every respect, are not binding here, while the judgment of the Privy Council cannot be said to decide the question in its direct applicability to the people of this side of India.

"10. On the next occasion of the question arising as it almost certainly will, the Bombay High Court Judges will have to decide it in the light of the Privy Council's decision and it remains to be seen whether the High Court will adhere to its former view of the law as applicable to this Presidency or will alter it in accordance with the views of the Bengal and Madras Courts.

"11. There is, therefore, no objection to the Bombay rulings being followed in the present instance, as it is clear the husband is otherwise fully competent to officiate as deputy for his wife. Government can safely leave it to the members of the original watandár's family on the death of the female representative watandár to contest with her husband or his relatives the question of the devolution of the watan estate now discussed.

"12. In the case reported in the Indian Law Reports, Volume VI., Bombay Series, page 87, *Bulákhidás* v. *Keshavlál*, Mr. Justice Melvill says: 'In this Presidency, and especially in Gujarát from whence this case comes, the Vyavahára Mayukha, is a principal authority, and on the strength of Chapter IV., Section 8, paragraph 10 of the Mayukha, it has become the established rule in this Presidency that daughters take by inheritance an absolute estate and not a limited interest as they would under the Mitákshara.' It seems from this remark that the interpretation of the Mitákshara which has been unhesitatingly adopted by the Privy Council must be accepted in this Presidency, but inasmuch as the Mayukha is a principal authority in this Presidency and more especially in Gujarát, we must fall back on the Mayukha which Mr. Justice Melvill declares to be a sufficient authority that daughters take not only absolute but several estates, and consequently, when not having any issue, may dispose of such property during life or may devise it by will."*

APPENDIX D.

Opinion of the Honourable the Advocate General quoted in G. R. No. 6444, dated 30th August 1883:—

"I quite agree with Mr. Naylor in his reports 11 and 554 of 1883.

"A watandár is defined in section 4 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) to be 'a person having an hereditary interest in a watan.'

"Hereditary interest means an interest that a person has obtained through, or which has descended to him from, an ancestor.

"According to Hindu Law a son by birth acquires an hereditary interest in ancestral estate. Thus in the genealogy given by the Revenue Commissioner, Wáman on his birth acquired an hereditary interest in the watan and had in the life-time of his father, Malhár, and of his uncles, Sakhárám and Amrit (assuming he was born in their life-time), a present interest in the watan and was a watandár within the definition given by section 4. In like manner if Sakhárám and Amrit had had sons, such sons would likewise have acquired by birth present interests in the watan and would have been watandárs.

"But the class that acquires such interest by birth is confined to the lineal descendants of the acquirer of the property and does not comprise collateral members of the acquirer's family. Such collateral members have the possibility of succeeding to the property if the acquirer's descendants become extinct; but until such descendants become extinct such collaterals have no interest or estate in the property. There is no such thing as a vested remainder in Hindu Law.

"Thus to revert to the Commissioner's genealogy, the watan was acquired by Rághopant, brother of Visáji, the ancestor of Antáji; and Visáji never had any interest therein. Consequently his descendants including Antáji never acquired by birth or otherwise any interest. Nothing shows this more clearly than the fact that on the death of Wáman without male issue his widow as his heir succeeded to the watan in preference to Antáji, and Antáji has now no interest in the watan. His right (if any) to succeed depends upon his surviving the widow, for he has no vested remainder; and if he does succeed the watan will be self-acquired property in his hands and not ancestral property which again shows that he has now no hereditary interest in the watan and consequently is not a watandár."

* On this point *vide* now I. L. R. II. B. 285 and G. R. 2793 of 3rd May 1888, R. D., quoted *supra* p. 205.